

Approved May 10, 2006



VERBATIM MINUTES

**SCOTTSDALE PLANNING COMMISSION
COMMUNITY DESIGN STUDIO
7506 E. INDIAN SCHOOL ROAD
SCOTTSDALE, ARIZONA
APRIL 19, 2006**

REGULAR MEETING

PRESENT: Steve Steinberg, Chairman
James Heitel, Vice-Chairman
David Barnett, Commissioner
Kevin O'Neill, Commissioner
Steven Steinke, Commissioner
Jeffrey Schwartz, Commissioner

ABSENT: Eric Hess, Commissioner

STAFF PRESENT: Donna Bronski
Tim Curtis
Lusia Galav
Randy Grant
Frank Gray
Tim Curtis
John Lusardi
Sherry Scott
Greg Williams

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Steinberg at 5:09 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES REVIEW AND APPROVAL

1. March 22, 2005 (including Study Session)

APPROVED

COMMISSIONER BARNETT MOVED TO APPROVE THE MARCH 22ND, 2006 STUDY SESSION MINUTES AND REGULAR MINUTE MEETINGS. SECONDED BY COMMISSIONER SCHWARTZ, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

CONTINUANCES

2. 2-TA-2006 ESL Text Amendment

CHAIRMAN STEINBERG: We have one continuance, 2-TA-2006. Yes, I'll attach the amendment. I need a motion to continue that, please.

COMMISSIONER BARNETT MOVED TO CONTINUE CASE 2-TA-2006, THE ESL TEXT AMENDMENT TO A DATE TO BE DETERMINED. SECONDED BY COMMISSIONER HEITEL, THE MOTION CARRIED BY A UNANIMOUS VOTE OF SIX (6) TO ZERO (0).

INITIATION

3. 222-PA-2006 Text Amendment on Aircraft

COMMISSIONER HEITEL: On item number 3, 22-PA-2006, I would like to recommend initiation of that text amendment with the following clarification for that language. And I will just read the entire two sentences as I would like them to be amended.

COMMISSIONER HEITEL MOVED TO APPROVE 22-PA-2006 (TEXT AMENDMENT ON AIRCRAFT) REQUEST BY THE CITY OF SCOTTSDALE, APPLICANT TO INITIATE A TEXT AMENDMENT TO THE SCOTTSDALE ZONING ORDINANCE FURTHER CLARIFYING THE CITY'S CURRENT ZONING, THAT AIRCRAFT IS RESTRICTED FROM TAKEOFF AND LANDING IN RESIDENTIAL DISTRICTS. SECONDED BY COMMISSIONER SCHWARTZ.

COMMISSIONER STEINKE: May I please speak to you, Chairman?

CHAIRMAN STEINBERG: Yes, sir.

COMMISSIONER STEINKE: I was hoping for a presentation to catch me up on specifically what that's about. Can you give me a minute or two, Randy?

MR. GRANT: Certainly, I'll give you a little bit of background. Most of the north area was annexed into the City in the late '70s and early to mid-'80s. At the time and since, there have been sporadically instances in which we have known that people have landed helicopters for their personal use on their own private property, residentially-zoned properties.

Currently the zoning ordinance allows helicopter activities only on the airport property and in the I-1 with a conditional use permit. And then there are three other locations that have use permits for helicopter landings and those hospitals where the helicopter landing is ancillary to the main function.

APPROVED

In 1983 the City Council considered an amendment to the text. This was initiated by the Planning Commission, but considered an amendment to the zoning ordinance text to allow helicopter landings as a conditional use permit. Council did not approve that.

So from that we know that there was direction and intent that it was not an appropriate conditional use permit. The Board of Adjustments since has directed that it is not an accessory use to single family residential. So we feel very comfortable that currently the ordinance does not allow this activity. But there is interest in clarifying that and making it absolutely as defined as possible so that no one is confused about what the intent is. And that's what this is, bringing forward a clarification that would make it crystal clear.

COMMISSIONER STEINKE: Okay. Thank you.

CHAIRMAN STEINBERG: Okay. So we have a motion on the table. We've got a second, all in favor. Any opposed. That passes.

THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SIX (6) TO ZERO (0).

4. 247-PA-2006 Institutional Use Text Amendment

CHAIRMAN STEINBERG: Okay. We're on item 4, another initiation: 247-PA-2006. Randy, would you give us a brief description, please?

MR. GRANT: Certainly. This is a request to initiate a text amendment that would require assembly uses of some size. And we've not attempted to determine what that size threshold is, specifically, but that assembly uses that generally generate a lot of traffic and may have other impacts as well, be required to get a conditional use permit where the stipulations and the conditions of the approval would help to mitigate impacts on adjacent properties.

There have been a number of issues come up lately where the assembly uses have generated concerns about parking, the amount of parking, location of parking, buffers, landscaping and so forth. And so this is just an opportunity to initiate the text so that we can start to understand what is in the community's best interest in terms of limiting or not limiting the assembly uses to a certain size threshold by right, and above that threshold to a conditional use permit.

MR. STEINBERG: So the mention of two acres or more in our packets, we should ignore that, or should we make a motion that contradicts that, or takes that out of play?

MR. GRANT: I think we would prefer, actually, as we start into the public, the invitation for public comment, that we not have something so specific that should we hear something different from the public it would make it difficult to change that.

CHAIRMAN STEINBERG: Okay, thank you. Commissioners, any questions of Randy Grant?

We have two cards, let's have Dawn Brokaw come up first. Dawn, you only have three minutes.

MS. BROKAW: Hi. My name is Dawn Brokaw and I live in the cactus corridor. We had some concerns because some of these assembly uses that don't require use permits, there's a real problem with Code enforcement, with traffic, with lights. And to give you an example so that you understand what our concern about this is, about a year and a half ago we had one of these uses come through DR Board. And Tom Silverman was on DR Board and he asked that the lighting issue be handled by staff. And so staff, you know, went back and they met with the Applicant. The neighborhood was there; we met with the Applicant and we all came to an agreement on the lighting issues. And it was signed, and here's the signed document and it's notarized and approved by the City. However, these stipulations were not met by the assembly usage. And so when we called Code Enforcement, Code Enforcement informed us that they had no way to enforce this, because it really was not a stipulation; it was just an agreement. And since there is no way if there's no use permit to make stipulations, there is no way to enforce any agreements, whether they're between neighbors or even between the City and the Applicant itself. So it's a code enforcement problem and there's no control. So whether you've got a teen center, or a recreational center, a church, or whatever, they basically don't have – the City has very little control over what happens and it's very difficult to enforce any problems. So if there's a use permit in effect then you can stipulate, but a DR Board can't stipulate. So that's why we're concerned about having stipulations, more than anything else, that are enforceable.

CHAIRMAN STEINBERG: Thank you very much. Susan Wheeler?

MS. WHEELER: Good evening. For the record my name is Susan Wheeler and I live in the cactus corridor and Dawn said everything I needed to say. So all I want to add is, if you put a group together we would certainly like to be included in the dialogue. Thank you.

CHAIRMAN STEINBERG: Thank you, very much. Anyone want to make a motion?

COMMISSIONER BARNETT MOVED TO INITIATE 247-PA-2006, TO INITIATE A TEXT AMENDMENT TO THE SCOTTSDALE ZONING ORDINANCE TO RESTRICT NON-RESIDENTIAL USES IN LARGE LOT, SINGLE FAMILY RESIDENTIAL DISTRICTS. SECONDED BY COMMISSIONER HEITEL, THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SIX (6) TO ZERO (0).

EXPEDITED AGENDA

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| 5. | 1-UP-2006 | <u>Tanners</u> |
| 6. | 6-AB-2006 | <u>Scottsdale Foothills Condominiums</u> |
| 7. | 7-AB-2006 | <u>Dusenberry Residence</u> |
| 8. | 3-GP-2006 | <u>Transportation General Plan Amendment</u> |

CHAIRMAN STEINBERG: One brief housekeeping note. On the regular agenda, item 8 has been moved to the expedited. So if there's anyone here – I don't think there's anyone here to speak on that. But if there is, we'd like to hear from you before we make a motion on the expedited.

APPROVED

We have one card for one of the expedited items, and that's item 6; Leon Spiro. Mr. Spiro, would you like to speak right now?

MR. SPARROW: I wonder if we can have a staff presentation of this; this is pretty important.

CHAIRMAN STEINBERG: You bet. Would Frank, or Randy, or somebody like to make a presentation for the Planning Commission?

MR. SYMER: Commissioner, Chairman, members of the Commission, Dan Symer, Planning Development Services. This case is Scottsdale Foothills Condominiums, 6-AB-2006. It's located on the north – southeast corner of 92nd Street and Rain Tree.

Currently the site is chiefly for multi-family. It's right here, it ends there. It is an existing development. It was approved by the Development Review Board in 1987 and was rezoned to R-5 from R-143, R-135 to that in 1984. When the development was processed, the stipulations for the case did not require the Applicant to abandon the GLO easements. You get a little bit closer, the site is surrounded on all sides by and through the middle with the GLO easements.

Currently staff has obtained, the City has obtained, all right-of-way dedications and necessary easements for the development. The regional trail system in the area -- as you can see, there are no trails or planned trails in the area.

I'd be happy to take any questions, if you like.

CHAIRMAN STEINBERG: Thank you very much. Commissioners, any questions? No? Okay, Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Yes. Just a clarification from staff. On these GLO abandonments, the action we're taking as Planning Commission, is a recommendation to approve or disapprove solely Scottsdale's interest in those easements, and that's the only action we're taking; is that correct?

MS. BRONSKI: Chairman, Commissioner Heitel, that's correct.

CHAIRMAN STEINBERG: And it's the City's right to do so. I just want to confirm that. Once a circulation plan, transportation plan has been established, then the GLO easements which were basically set up to grant access, are no longer necessary generally.

MR. SYMER: Yes, that's correct.

CHAIRMAN STEINBERG: Thank you. Mr. Spiro, you've got three minutes, sir.

MR. SPIRO: That was one hell of a presentation, I want you to know; nobody here could hear it, or know what was going on.

Leon Spiro, North Scottsdale. This is exactly – Commissioners, this is exactly what we've been waiting for, something of this magnitude to come before the Commission and the Council. And just hopefully – I see Mr. – is that Mr. Burnbaum? No. I'm fooled.

I have some questions. Rather than talk about GLOs, you've heard me many, many times. I guess I would just like to go to the Planning Commission report, authored by somebody, it's not signed or anything like that. One doesn't know who in the world made this up.

So I'm reading under "background". "When the development was approved the City did not require the abandonment of the GLO easements." Please explain that. As I understand, at that time that this was approved or whatever, that there was Ordinance 1386 which only call for no abandonment, it called for an exchange -- if you want to call it abandonment -- an exchange in easement for an easement.

And I could also ask you: What is a GLO easement? I just spoke before the Trades and Registration Commission, or whatever they call it, and most of the people there didn't know what it was, and we were talking about a surveyor leaving the GLO easement off a plat survey. And this is exactly – probably what happened here, it – or overlooked.

The City Staff discovered that GLO easements were not abandoned and required the applicant to apply for an abandonment of the easement before the condominium plat can be approved.

Let's see, the City has viewed these plat and roadway and utility easements as assured access, at least until a local circulation plan is established. What's -- up in my area, you've abandoned all of the easements and nobody seems to have complained about it yet, because the neighborhood hasn't been completely developed yet.

CHAIRMAN STEINBERG: Mr. Spiro, could you wrap it up, it's been three minutes. Thank you, sir.

MR. SPIRO: Boy, and what a kangaroo court. I thought when Mr. Gulino left that it might be better.

Well, I want to ask you: When you approve this abandonment request, what are you actually abandoning? Tell everybody here what you're abandoning. Are you abandoning that easement in total, or are you like, Mrs. Bronski has said quite a few times, when we abandon, the easement is gone. And that's the big question, is it gone, or is there a private property right that still exists and only the Federal Government can abandon that easement in total?

CHAIRMAN STEINBERG: Thank you. Thank you, Mr. Spiro. We have two more cards, Tom Kimling, who's speaking on the same case; number 6 on the agenda. No, you're not speaking.

Okay. We have Susan Wheeler, who did not check off whether she wanted to speak or not on behalf of John Aleo. Are you desiring to speak?

MS. WHEELER: Yes. I'm just reading his letter into the record.

APPROVED

CHAIRMAN STEINBERG: Okay. Thanks.

MS. WHEELER: From John Aleo.

"Since the City issued building permits for the original developer to erect permanent structures onto GLO patent roadway easements, does the City plan on taking responsibility for any legal actions filed against this developer that may potentially come about during its conversion to condos? Or do you think that the City won't be included in the list of the liable.

This is another example of why the City Council should have taken Mike Foster's attorney advice on July 3rd, 2001, to take a hands-off approach to GLO patent easements. The abandonment of the City's interest is not going to solve this developer's problem. And per the OFHEO, mortgage fraud may be created on the financing of any of these potential condos. You better do your research before you decide anything, even though the damage has already been done by issuing those building permits.

Do not allow the GLO patent roadway easements to be taken off any plots of survey submitted to the City for any reason. Abandoning the City's interest does not eliminate the GLO patent roadway easement. They remain in perpetuity, on record with the BOM.

If you decide to abandon the City's interest in any GLO patent easement, the resolution should contain a disclaimer acknowledging other interest, and that no permanent structure should be erected onto same.

In Mohave County they are trying to reverse some of their abandonments of GLO patent easements that they have done up there before it's too late, according to the County surveyor. Mr. Lane, County Surveyor, understands the law and its ramifications.

John S. Aleo."

CHAIRMAN STEINBERG: Thank you very much.

Okay. We have closed the public testimony on the expedited agenda. Commissioner Schwartz.

COMMISSIONER SCHWARTZ: I MAKE A MOTION THAT WE APPROVE CASE 1-UP-2006, BECAUSE IT MEETS THE SPECIAL USE PERMIT REQUIREMENTS, AND APPROVE 6-AB-2006, 7-AB-2006 AND 3-GP-2006. SECONDED BY COMMISSIONER STEINKE, THE MOTION CARRIED BY A UNANIMOUS VOTE OF SIX (6) TO ZERO (0).

CHAIRMAN STEINBERG: We've got one more.

MR. SCHWARTZ: Oh, I'm sorry, 3-GP-2006.

CHAIRMAN STEINBERG: Thank you, very much.

CHAIRMAN STEINBERG: Seconded by Commissioner Steinke, all in favor. Any opposed.

APPROVED

REGULAR AGENDA

CHAIRMAN STEINBERG: Okay, we're up to our one regular agenda item; that's the 20-AB-2005, the Colaric Abdandonment. And we'll wait for Randy Grant to give us our presentation. Thank you, Randy.

9. 20-AB-2005 Colaric Abandonment

MR. GRANT: Members of the Planning Commission, Randy Grant, Planning and Development Services. I'd like to give you a very brief overview of this case. This is one of those other policy issues that has a lot of technical and emotional issues attached to it.

We're going to try to stay as focused on fact as we can in the presentation, and then answer any questions after the applicant and the audience have had a chance to respond.

This is a request for abandonment of right-of-way in three segments. As we'll see on the map in a moment, there are segments that are 12 feet wide along one north/south entry point into the alley, a 12 foot wide east/west segment behind the properties that are requesting abandonment, and a 16 foot wide alley at the other end of the entrance to the alley.

And you can see, this is the location of the requested abandonment. The area generally is north of Indian School, and Indian School is to the south, Lafayette is to the south. Exeter is to the north and 66th Street. So you have a really wonderful subdivision back in here on the cul-de-sac. The alley in question is north of the street, and it goes north, east/west, a 12 foot segment, and a 16 foot segment along the east side, coming again off the street.

This gives you a little bit closer view. This was established in a plan in 1964. These lots were actually – initially a part of a subdivision to the north, which had about 700 foot long lots, two and a quarter acres apiece. These lots were assembled, actually, on both sides of the street. These properties were assembled and subdivided into something that was 18,000 square foot minimum lot size, so most of these properties are 18, 19, 20,000 square feet lot size.

This again shows you the relationship between the original lots and these lots extended to the south, all the way down to the south end of this particular Villa Arcadia II subdivision. So they were assembled, taken out of the Lombardi Estates subdivision and re-platted as Villa Arcadia II in 1964.

Lombardi Estates was platted in 1948, two and a quarter acre lots. There were six lots that were assembled and re-platted in 1964 as part of Villa Arcadia II, and it's the south 375 feet of lots 2 through 6, and the south 418 feet of lot 1. The alley was created as a dedication on the plat for Villa Arcadia II. The alley was 16 feet on the east, 12 feet along the north, and 12 feet along the west, including a temporary alley easement with a note on the plat that said, "The temporary alley easement will be abandoned at the time that the cul-de-sac extended through to the remainder of the lot to the west."

And they actually did that. In 1968 there was a split on lot 7, the cul-de-sac which extended to the west, and the temporary easement was rededicated as a 12-foot permanent easement in the same location, except that instead of it all being 12 feet on the one side of the lot it was six feet and six feet.

An alley is defined as a public service road used to provide secondary vehicular access to properties otherwise abutting on the street. And at both the time of the 1964 plan and the 1968 dedication of the easement on the west side of this alley, there were no restrictions placed on the use of the alley.

Portions of the alley have been released for vehicular access over time, and portions have not. The picture in the lower left-hand corner is looking north along the west side of the subdivision. So this is the west side of the alley and you can see just from the surface of the ground and so forth, that it has been used over time.

There is a property that has a gate onto the alley, in the back. So assuming that there has been enough regular use of the alley that it keeps it cleared out, as you can see here. This is the east side of the alley looking north. This is the 16 foot wide segment, and you can see the vehicle ruts, indicating that there has been some travel on that alley. At the back of the alley is a gate that services, or provides access, to a lot fronting onto Exeter. This is looking down the alley from east to west. So you can see that – where there's – there has not been vehicular traffic going east and west at – as of the current time.

On November the 5th of 2004 a building permit was issued for lot 4, on the Lombardi Estates subdivision fronting onto Exeter. And the building permit was for a guest house that would have access off of the alley to the rear. At the time the alley was shown on the plans. The permit was issued in November. And in the following year – actually in the summertime - we met with the applicant about abandonment of the alley easement, the alley dedication, and on October 25 of 2005 the application for the abandonment was submitted.

That brings us to the current time in terms of the chronology, and I'd like to – I'd like the applicant in the audience to come up. We'll be available for comments and questions that you have.

CHAIRMAN STEINBERG: Before you do, we might have some questions of you. So I'm going to ask my fellow Commissioners: does anybody have any questions of staff, Randy? No? Okay, Commissioner Schwartz.

COMMISSIONER SCHWARTZ: Randy, can you tell us who is actually using the alley at this point? Do you know what properties?

MR. GRANT: Yes. The – lot number 2 is using the alley on the east side. The gate is in this location, so as you come straight down the alley you can open the gate, go into the lot. And I believe it's lot 7 that is using the alley on the west side.

COMMISSIONER SCHWARTZ: And we're correct that there is a building permit issued in a house that has access with the driveway to the alley?

MR. GRANT: The building permit that was issued in November of '04 is on lot number 4, and they are showing access out of the guest house and the garage, onto the alley in this location.

COMMISSIONER SCHWARTZ: And when was that permit pulled?

MR. GRANT: It was pulled November of 2004.

CHAIRMAN STEINBERG: Randy, is the alley used for any other reasons; utility easements, Fire Department access, emergency vehicle access or trash collection?

MR. GRANT: There are two utilities that use the alley for utility purposes, for overhead electric lines on poles down the alley. And also the Arcadia Water Company has a standpipe on the property, I believe it's this one. It's 10 and 11, and periodically used, although infrequently used, the alley, for access to that standpipe.

Both utilities, excuse me, have indicated that they would have no objection to having an easement placed over it, as long as they can get access. They're not as concerned on whether it's a dedicated alley, or it's an easement on private property.

CHAIRMAN STEINBERG: And whose responsibility is it to keep that alley free and clear of debris and overgrown shrubbery?

MR. GRANT: By code, Mr. Chairman, it is adjacent property owners that are responsible for maintaining the alley.

CHAIRMAN STEINBERG: Okay. Thank you. Mr. Heitel.

VICE-CHAIRMAN HEITEL: Randy, just a follow-up. The staff will be back after the public testimony to answer any questions that we might have –

CHAIRMAN STEINBERG: Yes.

VICE-CHAIRMAN HEITEL: -- with the new process we're trying to follow?

CHAIRMAN STEINBERG: Absolutely.

VICE-CHAIRMAN HEITEL: Okay. Great.

CHAIRMAN STEINBERG: Okay. We have one more question for staff, Commissioner Schwartz.

MR. SCHWARTZ: Yes. Randy, you said the adjoining property. Is it the – is it the dedicated property owners that are required to maintain it, or both property owners?

MR. GRANT: Typically maintenance is prescribed to property owners adjacent from the center of the alley. In this instance the alley was dedicated completely by the Arcadia II subdivision. So if there were an abandonment, the entire 12 feet along the north would go back to the Arcadia II property owners. But the maintenance is to the center line of the alley, of the dedicated alley, so we would be looking for residents on both sides to – for maintenance.

CHAIRMAN STEINBERG: Okay. We have one more question. Commissioner Barnett.

COMMISSIONER BARNETT: Mr. Grant, the City staff has a denial, a staff ordinance denial on this application. It looks like there's three separate issues here, the long abandonment behind the house; the abandonment on the west; the abandonment on the east. Does the City staff have a blanket denial for all three of them; and is the denial because it's a contentious issue, or is it related to the actual use of the alley, somehow?

MR. GRANT: Our recommendation is based on the fact that there has been use of the alley, and then there is ongoing use of the alley, even infrequently. If someone is relying on access to an alley we will generally recommend denial of the abandonment. And so we would be looking at all three segments.

COMMISSIONER BARNETT: So the longest section behind the – between the properties, just by looking at the property, it's not currently being accessed; maybe randomly by people walking through the neighborhood. But using that logic, is that the same logic they're using for denial of that section as well?

MR. GRANT: Yes. Because we have a building permit that was issued and construction that has been undertaken in reliance on access to the alley.

CHAIRMAN STEINBERG: Commissioner Steinke.

COMMISSIONER STEINKE: Just quickly, a clarification, Randy. You made reference to a building permit for lot number 4. In one of the many correspondence pieces that we had there was reference to a variance being granted. Just for clarification, the only legal document pertaining to – that would relate to that lot 4 has been a building permit right? Not a request for a variance or some other legal approach?

MR. GRANT: Yes, that's correct. The only variances that we're aware of are two variances relative to this property, regarding setbacks; one in '79 and one in '85. But there have been no variance requests and no variance activity on lot number 4.

CHAIRMAN STEINBERG: Okay. The Applicant, do you want to make your presentation.

MS. VAN RIPER: Good evening, Mr. Chairman and members of the Commission. For the record my name is Ellen Van Riper, I am the legal counsel to the Applicants in this case, Mr. Wayne Colaric, John Colton, and the neighborhood of Villa Arcadia II, because of the Calle del Media coalition. For the record, my office address is 1109 East Braeburn Drive in Phoenix, 85022.

The first slide I have here for you is the graphic that Mr. Colton had prepared as part of the application, showing the various lots that would receive the property if its abandonment is approved by the – recommended approval by this body and approved by the City Council.

And as Mr. Grant mentioned during his presentation, Villa Arcadia II was carved out of Lombardi Estates. When planning the entirety of the subject, alleys came from Villa Arcadia II, which makes this somewhat different than your usual alley where you have

dedications from two – from the north and the south, or the east and west parcels to make the alley. All 12 feet to the north and the 12 feet on the west, and the 16 feet on the east came from Villa Arcadia II. No dedication from Lombardi Estates, which we think is important in this situation, and the fact that it all came from Villa Arcadia II, means it all should go back to Villa Arcadia II.

And because of the fact it all came from Villa Arcadia II, we believe that the requirement to have the consent of everybody on Lombardi is severely diminished, because they did not – those properties didn't contribute to this. And we submit that they have no greater rights to use this alley than what the historic uses have been, which we will show as we go forward have been public utility easements; pedestrian use; equestrian use; and some minimal use on the west end for landscapers to access two lots in Villa Arcadia II; and on the east end, to access what we believe, you know, there was temporary access during the construction of the residence on lot 2 of Lombardi; and we believe that recently that that seems – 16 feet has been used to access what appears to be an illegal commercial operation on that lot.

And you'll see, this is the original plan for Villa Arcadia II. The Lombardi Estates lots, their acres, as Mr. Grant indicated, these are roughly half-acre lots. And you'll see the temporary easements that – easements back – alley back here, and the alley here.

Now this you have seen already in your packet, in Mr. Grant's presentation, but I want you to take a good look at this, because you'll see to the north it's very densely vegetated. And as Mr. Grant accurately pointed out, there has never been full vehicular travel all the way along here. The practical with – there are obstructions, the soil conditions, you know, prohibit that. The only thing that we have seen - and you'll hear this from some of the neighbors - is, some use here has been maintained by this lot and that lot for access by their landscapers and to come into their side yards. There has not been access, contrary to Mr. Grant's presentation, by this lot. Our knowledge is, these two lots which both want the abandonment to occur.

And then over here, this is the 16 foot side on the east. If you look right there in the picture, you can see that that location beyond that gate is where there are a number of commercial-grade cement mixers stored, a lot of building materials, and – which we believe it's significant because the owner of lot number 2 is building the current residence on lot number 4 and has controlling interest in lot number 6, along Exeter in Lombardi Estates.

CHAIRMAN STEINBERG: Excuse me, Ms. Van Riper, could I just ask you to keep your comments to the case at hand. I do know that there are some things that might not be code compliant –

MS. VAN RIPER: Uh-huh.

CHAIRMAN STEINBERG: -- but we're really here just to discuss the abandonment --

MS. VAN RIPER: Okay. Yes, sir. Thank you.

Okay. We – I believe there are several reasons why the Commission should recommend approval of the abandonment. The alley was not intended for vehicular use. It has never been used consistently for vehicular travel since its creation. The alley is

APPROVED

not engineered for, and is too narrow for safe use by motor vehicles. Permitting vehicular use of the alley would reasonably increase traffic on Calle del Media, which is a quiet cul-de-sac.

Approval of the abandonments would eliminate the alley as a corridor for crime. Abandonment is necessary to ensure the quiet use and enjoyment of all properties along Calle del Media, particularly those that adjoin the alley to the south in the east and west ends. The alley is not needed by the City for any purpose other than public utilities, and this is stated in the staff report: "As a matter of public policy, the City should not permit long-dormant alleys like this one, within its older, large lot, single family residential neighborhoods, to be used for private driveways."

The first point is the alley was not intended for vehicular use and has never been used consistently. Contrary to the staff report, it is not being actively used. I've already talked about the west end, the intermittent use for landscape trucks to come in, pick up the lawn clippings, the tree clippings, and take them away. That's it on the west end.

The east end, there was access during the construction of the residence in lot 2 of Lombardi, and there still is some use of that. Everything in the middle there has not been active use, so that is a bit misleading. The consistent historic use through the 40-plus years this thing has been in place, has been public utilities, pedestrian, equestrian use.

And as we go forward through these slides, and I'm sure most of you have been out there and seen this alley. Vehicular travel is impractical. It's shown as 12 feet, but the physical constraints are much narrower, given the terrain, the obstructions, the utility poles. There's a three-foot easement for SRP. Many places it's 7 or 8 feet wide only, due to the obstructions. And contrary to the staff report, and what we've been hearing from the staff all along, this is never – this never was a full alley under your ordinances, because it would have had to have been at least 16 feet. Only the east end would qualify under the 16 feet. It is a half alley for the remainder of it. Which we think is important and indicative it wasn't intended for vehicular use.

Now these next pictures, this is at the curve at the east end. And since this picture was taken, there were some efforts by a property owner in Lombardi to do some clearing here. So some of the brush has been removed, but this was the historic condition; a lot of brush in the way.

This is a little further to the – towards the west, probably about between lots 3 and 4 in Lombardi Estates. You can see that that's a pretty impassible bit of - trees in there. I think there's some citrus in there. I walked through with a little bit of – with quite a bit of difficulty walking through there.

And this is the view from lot 4, heading to the west. Again, a lot of vegetation. Not the most passable way to get through.

Now as Mr. Grant mentioned, the Villa Arcadia plat was approved in January '64. There was the re-plats in '68 to make that temporary easement on the west end a permanent easement. And significantly, three weeks after this plat was approved, that this City adopted its first subdivision ordinance, Ordinance number 181. And because that was

the City's first subdivision ordinance, it's reasonable to conclude that this is what was used to prepare this plat and process this plat by the City.

Section 102.2(d) of Ordinance number 181 defined alley as basically the same definition we have today, "A public service way used to provide secondary vehicular access to properties otherwise abutting upon a street."

"Public service way." The only public service here has been the utilities. Never for trash collection or emergency vehicles; public utilities only.

Then you have Section 302.01(e), "Alleys shall be 16 feet, a single family residential on both sides." So this was not a full alley at the time the plat was adopted, "All half alleys shall have a minimum width of 12 feet. This was half alley at most, at least on the west and north portions of it.

And continuing with that Ordinance, "Alleys," this – we believe this is significant, because the Ordinance at that time required: "Alleys shall be required in all residential subdivisions." So when this was platted, they had to show alleys. And at the time it probably made sense to have alleys because of trash collection concerns. But given the historical use, narrowness of it, we don't believe that this was ever truly intended to be a full alley as that term is commonly understood. It's an alley in name only.

We believe, in giving a bunch of indicators, as I've detailed in writing to you, the historic uses, and the fact that it was never improved to City standards. That's the next section here: "All streets and alleys within the subdivision shall be graded and surfaced at cross-sections, grades and standards approved by the City Engineer." That didn't happen here. It stayed in its natural condition to this day.

So we believe that this was actually a de facto public utility easement. It was never intended to be an alley for vehicular use. You can see the electrical poles there. And here are more electrical poles. No paving here again, the terrain is very rough; electrical poles again.

We also believe that this should not be considered a – what is – today's problems now, because it's not engineered for, and it's too narrow for safe use by vehicles. Certainly the alley does not conform to the City's current alley standards. Those standards discourage alleys. Your design manual says alleys are discouraged, and dead-end alleys are prohibited.

And for public health, safety, and welfare purposes, alleys must be wide enough to accommodate modern conditions, including modern-sized vehicles, safe turnarounds, et cetera. The alley is not wide enough to be safe. This is your design guidelines, this is the language: "Alleys are to be discouraged and must be approved. And they need to be at least 16 feet in width." Today the City would not approve this as an alley. What we have out there right now; at least the west and the north sides of this, under your own standards.

Okay. We prepared this graphic to show exactly the conditions that you would have in that alley if this were approved for full vehicular use all the way around. Cars could not pass each other in here. And given the poles and the other vegetation, there's going to

be some blind corners in this thing. And there we have utility poles; given the location of utility poles, cars won't be able to pass.

Yes, sir?

MR. SCHWARTZ: Let me interrupt your conversation Oh, that's fine.

MS. VAN RIPPER: Okay. Thank you very much. Now this is the rear of lot 4 of Lombardi Estates where the guest house is being constructed. You can see, you know, there's a very mature citrus tree there, which would make it difficult to get into the garage, which is right – there's the garage entrance right there. And here's another view of it, garage entrance again is there. Lots of vegetation right here.

And here's a graphic we prepared to show what conditions could be expected for someone trying to back out of this garage into the alley, given the current width. Now of course we don't have the trees in the way here, and it is a true 12 feet on our graphic, but you can see it's still very tight. You can't do a, say, three-corner – a three-point turn here.

And we also think that this is a difficulty because of the placement of the guest house here. This is the site plan for that property. Should I skip this, Mr. Chairman, will you permit this?

CHAIRMAN STEINBERG: Well, we have to wrap it up –

MS. VAN RIPPER: Okay. I'm sorry.

CHAIRMAN STEINBERG: - because we have a lot of people.

MS. VAN RIPPER: Okay. Well, me skip forward then. Okay. Well, let's go through that, I won't go there. Okay. And this shows a close up look at it. - Let's skip through some of these. Okay. We already covered some of these things. Let's see.

See, here's an instance where the utility pole is there, the wall's there, it's 4 feet, seven inches distance, a car can't get through the utility pole. Now the utility pole Let me skip through. A mature citrus tree, again blocking the passage. Now this is some of the existing encroachments in the alley. The alley runs right here. That's a sport court built in the alley.

And this is – the alley comes right here. Air conditioner, an accessory building right on the property line. They have an overhead light for the sport court in the alley. Now this is of importance, because this image shows that the alley sits higher than a lot of the properties to the south. So what you have is, you have – this is lower than up here, and you get the water here, showing that this sits lower. And that's important, because you can see the difference here. This is the wall on lot 4, the wall on Calle del Media, the difference in height.

Now what's going to happen when you have this alley cleared, compact to the City standards, paved and vehicles running on it? The walls over here were not built to be retaining walls. They were built to be, you know, just backyard regular walls. So what

happens when these walls are – they're compromised and they collapse; who's gonna pay for that?

We also believe that they'll have increased traffic on Calle del Media. Now I'm gonna skip this, because we are going to have neighbors who are going to talk about that during the public hearing. This is the east end. Since you didn't want to hear about the zoning violation, I'll skip through these. There they are, that's the – okay, I'm going to skip through that. I'm going to go back, actually.

This is lot 2 in Lombardi, lot 4. And these lots all controlled or construction by lot 2. I'm sorry lot 4. Okay. And this is the west end. I know we had some discussion about it. This is used by the people, the lots here and here support the abandonment. This is only maintained for their landscape purposes; the same view.

Okay. Now you've heard about the crime. We believe, and the Police Department supports this, you don't want to have these alleys because they're a corridor for criminals, and here are some of the problems we've had with graffiti in the alley. I will skip this, in the interest of time. And we already know this is not available for the City for any purpose.

Okay. I do want to cover this quickly. We don't believe as a matter of public policy that the City should permit these long-dormant alleys within large lot neighborhoods to be used for private driveways. I think many people who live in these neighborhoods would be shocked to learn that the alley behind their property could be used as a driveway to access numbers of other properties. And I think – and so this is not unique to Villa Arcadia II. Here's a map that was prepared by City staff, showing other alleys in the area. There's a lot of them listed within a mile radius of the subject case.

It shows it's not just a problem for Villa Arcadia II. And contrary to the staff's representations, these – a lot of these are wider than they said. Alley A in that picture, 16 feet, 16 feet again. But I think the point is that this a problem throughout the City. The problem is throughout the City and we don't want to be encouraging these to be used for driveways, because they're not safe, especially when it's substandard.

They do pose a threat to the public health, safety, and welfare, if used for vehicles. We believe that unnecessary alleys, this is something you'll be bringing up at your next meeting, unnecessary alleys should be abandoned to protect neighborhoods. And the City should encourage neighborhoods to apply for abandonment, especially when the City has no need for the alley.

We believe in this case denying the abandonment would be bad public policy and bad planning. And it's not in the best interest of the City to deny us abandonment, because if this is denied, what's going to happen later on, is that when this is improved, it's going to be a substandard, unsafe alley. The first time there's an accident on this alley, which is still owned by the City, who's going to be sued first? When the first child is killed, who's going to be sued first? The City of Scottsdale. That's what's going to happen if you have these alleys approved for vehicular use, as is being proposed.

Now the problem in this case came because, you know, the people in Villa Arcadia II had no notice of the intent to use the alley for a driveway, until it was starting to be built. Because this is a building permit case. There's no public notification in these kind of

cases. You only have your public notice when you have a zoning change, a variance, a use permit. Here, there's no public notification. So that was kind of an unpleasant surprise for our community.

So I think that's the last one I have, and I can finally – and this is a notice. That's the only notice of what was going on, outside of Exeter, no building permit posted. That's the front of the house. And this picture shows they could have accessed the guest house on their own property. This is the east side, there's plenty of room, west side, plenty of room. Yet they decided to use the alley. And here's the proposal – this is how it could have been done, right down the east property line, which is here, and into the guest house, the family chose the alley.

And that's the end of my presentation.

CHAIRMAN STEINBERG: Thank you very much.

MS. VAN RIPPER: Okay. And then – we also have as part of the presentation, a brief statement by Grant MacLennan, who's a resident, followed by a real short video presentation as well, then we're done with our presentation.

CHAIRMAN STEINBERG: Before you leave, do we have any questions?
Commissioner Schwartz.

COMMISSIONER SCHWARTZ: Can you go back to your slide of the dedicating parties, the first part of presentation.

MS. VAN RIPPER: Excuse me.

COMMISSIONER SCHWARTZ: It was the first part of your presentation.

MS. VAN RIPPER: Oh, okay. Let me go through it and find it.

COMMISSIONER SCHWARTZ: While he's finding that, give me the timeline of the subdivisions and their plats as they were approved.

MS. VAN RIPPER: Lombardi, what we heard from Mr. Grant, was originally in 1948.

COMMISSIONER SCHWARTZ: And that's to the north, correct?

MS. VAN RIPPER: To the north right. And that included this, at that time, when they carved Villa Arcadia II out of Lombardi Estates in '64, to make the smaller lots.

COMMISSIONER SCHWARTZ: Okay. When did the dedication of the alley occur?

MS. VAN RIPPER: 1964.

COMMISSIONER SCHWARTZ: With the –

MS. VAN RIPPER: With the plat. With the – excuse me?

COMMISSIONER SCHWARTZ: With the carve out of the plat. With the carve out –

MS. VAN RIPPER: Yes –

COMMISSIONER SCHWARTZ: -- of the alley of that plat?

MS. VAN RIPPER: Yes, sir.

COMMISSIONER SCHWARTZ: Okay. So the large lots were established first, then they established a smaller subdivision with a 12-foot alley, right?

MS. VAN RIPPER: Correct.

COMMISSIONER SCHWARTZ: Okay. That's what I wanted to know.

MS. VAN RIPPER: Okay, thank you.

COMMISSIONER SCHWARTZ: There was no opportunity for the property on the north, actually it wasn't required of the property of the north, because 12 feet obviously was wide enough at certain points, because that's all they required of the property of the south. Would that be a fair statement?

MS. VAN RIPPER: I would disagree, because –

COMMISSIONER SCHWARTZ: Well then, why did they only require a subdivision, a subdivision to the south that was part of the property to the north, to only dedicate 12 feet?

MS. VAN RIPPER: I don't know, but they did it on half-alleys at the time, they told me.

COMMISSIONER SCHWARTZ: It's a mystery, huh?

MS. VAN RIPPER: That's the mystery here.

COMMISSIONER SCHWARTZ: Can you keep going to the next video. The next slide. You made reference in here about the dedicator's rights. Okay.

MS. VAN RIPPER: Yes.

COMMISSIONER SCHWARTZ: The dedicator's rights to the property.

MS. VAN RIPPER: Correct.

COMMISSIONER SCHWARTZ: All right. So – do you have any case law to substantiate that, because the property owners to south dedicated that alley, that they're the only people that should have rights to that access?

MS. VAN RIPPER: I'm not going to say to the access, but the property goes back to them. And I think – what I was saying, is that those to the north don't have any greater rights, just because they happen to be, you know, to the north. Because –

COMMISSIONER SCHWARTZ: But you would agree that everybody has the same rights to the access, correct?

MS. VAN RIPPER: Yes. The question is whether it was to be vehicular; that's the question.

COMMISSIONER SCHWARTZ: And then next thing is that slide you showed with the animated pole. I actually walked it and drove my car down there partially. And I wasn't able to see any poles out there, so there must be only one pole that actually goes four feet, seven feet within, because that slide implies that it's in the middle of the alley. And I didn't see any poles in the middle of the alley.

MS. VAN RIPPER: Okay. Well, we may have somebody else in our group, who'll talk about the placement of the poles. But I know that there is a three-foot wide SRP easement, and so they're all in that three feet. But what part of the three feet, it probably varies.

COMMISSIONER SCHWARTZ: Well, I just want to make sure that we have accurate information –

MS. VAN RIPPER: Yes.

COMMISSIONER SCHWARTZ: -- so that we're all working from the same –

MS. VAN RIPPER: Well, the one I showed you was the four feet, seven feet – the four feet, seven inches one.

COMMISSIONER SCHWARTZ: But they all don't exist at four feet?

MS. VAN RIPPER: No, they don't.

COMMISSIONER SCHWARTZ: Okay. Thank you.

CHAIRMAN STEINBERG: Commissioner Heitel.

VICE-CHAIRMAN HEITEL: Yeah. Thanks. I'm trying to figure out these figures here. Can you hear? Just further in your timeline discussion with Commissioner Schwartz, Lombardi was created in '48 and then this re-plat in '64. And your timeline that you showed on there, you also made some reference to the Scottsdale subdivision ordinances.

MS. VAN RIPPER: Yes.

VICE-CHAIRMAN HEITEL: And what were those dates?

MS. VAN RIPPER: Okay. The plat was approved January 7, 1964.

VICE-CHAIRMAN HEITEL: Okay.

MS. VAN RIPPER: The first subdivision ordinance was January 21, 1964. So we – I think it's reasonable to assume that at this – this plat confirms to those regulations in all respects.

VICE-CHAIRMAN HEITEL: But in fact, the plat, or the re-plat, was created before the Ordinance, so the re-plat effectively one would argue has precedential right to what it was created at the time of the creation of that plat, regardless of what subsequent ordinances and when it was brought in.

Why would the subsequent Ordinance, two or three weeks later, or two or four years later, all of a sudden void a recorded plat? I don't --

MS. VAN RIPPER: Well, not saying it voids it, but we think that the proximity in time would indicate – the way, you know, plats are processed, it occurs over a long period of time, usually. The plats go through various processes. And so we would offer that for three weeks, is not critical, because the Subdivision Ordinance was in process, going through public hearings, and rewrites, revisions and everything, while this plat was going through the same process. And it does comply in many respects with that Ordinance.

VICE-CHAIRMAN HEITEL: But in fact, and I'll go off of that point, but in fact our, especially our real estate law in the State of Arizona is primarily predicated on priority of rights. And --

MS. VAN RIPPER: And that's understood.

VICE-CHAIRMAN HEITEL: -- so I think I've made that point. But let me follow up on that, because this – one of the probably the most troubling aspects of this is a concept, let me see if I can explain it. You've done, you know, your presentation was very good, and you demonstrated there's probably a lot of code violations there. There's probably some encroachment issues there, but those are not real issues for our discussion here today.

When a plat is created, and I'm a subdivider, I subdivide a subdivision and dedicate to public use, streets, alleys, whatever I choose to or am required to dedicate to public use. And then the public, with full reliance on that dedication, utilizes those dedications to the public, which is within their right. What unilateral right are you claiming that this re-plat, via Media, has to unilaterally take those rights that are vested in the public, and as you've demonstrated are being used and continually being used for construction purposes, vehicular access maybe? They're really not private driveways. They are pursuant to the dedication language of the plat.

How does – how do you exclude the owners to the north as members of the public who are relying on this dedication?

MS. VAN RIPPER: Okay. Well, we believe that, you know, as they went through this, this alley was never approved for vehicular use. We have over 40 years of it being kept in its natural state, except for the public utilities. That has to count for something. We're not talking about the alley being dedicated five years, ten years ago; over 40 years ago. The people who live in this neighborhood had an expectation, based upon it staying like it is, to have it stay that way. And that's -- our position is that, and I don't think it was

ever intended for – due to the narrowness, intended for vehicular use. That's our position on this.

And our – on this plat, on the south side, if you can see it, there are some even narrower alleys on here, it was ten feet and six feet, I believe, down here. So there were varying widths, but those were done together. When we added in this here, there was an additional dedication to make 16 feet, which was the full alley, and that does have some vehicular use, I believe, to this day. This is still 12. Never added the other four. So we believe there's a lot of evidence that this was not intended for a vehicle. Should not be used for vehicles, given the history of it; given what's there, given the practical consequences. So –

VICE-CHAIRMAN HEITEL: Yeah. And I'll wrap up there. But once again, I think – it seems to me you're making a great argument as to maybe why the ordinances have been improved, and you know, over time, and we've changed our philosophies and all those sorts of things.

But it still doesn't get to this fundamental property rights issue that I'm trying to get a grasp on. At the time prior to the Scottsdale Subdivision Ordinance, the property owners voluntarily, and in conjunction with the subdivision process, made dedications to the public, and the public has been and continues to rely on those dedications. And now those reliances are worth apparently nothing, because in hindsight the alleys were not big enough, or nobody's used them in a while? That's the confusing part I have –

MS. VAN RIPPER: Okay. Well, all of the instances, you know, we believe where public health, safety, and welfare considerations could override those kinds of private property interest. There are instances and we contend this is one of them, and given it's substandard, it's narrow, it's dangerous. And we think that the public health, safety, and welfare has to win out in this kind of situation.

The first time we have a child killed back there, and it can happen, I'm not making this up, I mean, it does happen. You know, it's going to be a tragedy, and this City will be sued.

VICE-CHAIRMAN HEITEL: And to reverse that, and I'll conclude and probably have some questions later, but you as an attorney, representing somebody who had relied on a property right and made substantial improvements based on a legitimate verifiable property right, you would not object to a City or someone else just taking that away from your client. You would said, "That's fine, I agree it's for the better of the community?"

MS. VAN RIPPER: Well, I, you know, this was – you know, it's not my client, obviously, but I do have people who – I advise clients to, you know, to do their due diligence. Try to talk to neighbors and to get concerns on record before you going spending exorbitant amounts of money on design and construction. Because I showed in some of those slides, this could have been done so all the burden of this access is where it should be, on this lot, not on the Calle del Media neighborhood. I mean, the assumption is, you know, from good common sense, you go find out, you know, you're going to start using an alley that's been overgrown for 40 years, people aren't going to get upset? So do talk to your neighbors before you do this.

VICE-CHAIRMAN HEITEL: Well, and I agree with you. And I encourage that and we have been, in trying to encourage that kind of communication from neighborhoods. Or neighborhoods even come to us with neighborhood plans, and community plans, and suggest that these great old neighborhoods have certain characters to them, but absent any interest to this date, by and of the neighborhoods in Arcadia, to establish those kind of guideline, to allow us to, you know, to consider that, and put that as a part of policy, you know, I'm only looking at private property rights here.

And regardless of well maybe it would have been better. Maybe it would have been a nicer way to do it. I tend to agree with all of those things you say, but in the same sense some of that feel-good is not necessarily what we're here to talk about. So anyhow, I'll go on.

MS. VAN RIPPER: Okay. Thank you.

COMMISSIONER O'NEILL: Thank you Commissioner. I'm Commissioner O'Neill. You mentioned in the presentation that they – it shouldn't be expected that anyone has any greater rights over another. But is it your understanding that both lots to the north and south of the alley, actually have rights to the alley?

MS. VAN RIPPER: Yes. We have rights, you know, legally what is the historic use.

COMMISSIONER O'NEILL: And so if they – if there's equal rights to the alley, should not both parties of each side of the alley have to agree, if those rights are going to be given up?

MS. VAN RIPPER: We think the fact that it all came from Villa Arcadia, to minimize that, we have 100 percent unanimity on the side where the property came from.

COMMISSIONER O'NEILL: Is there any neighbors to the north that support the abandonment?

MS. VAN RIPPER: Not that we're aware of. There are? Okay. They're out there, maybe we'll hear from them.

COMMISSIONER O'NEILL: Can you go to the – you also had another slide that referred to some ordinances about alleys, and definition of an alley.

MS. VAN RIPPER: That would be under Ordinance 181, I believe.

COMMISSIONER O'NEILL: I thought it might have been 103.2 or something.

MS. VAN RIPPER: Yeah. He skipped forward to it. That's the 1964 Subdivision Ordinance.

COMMISSIONER O'NEILL: All right. So here specifically you're pointing out that the alley is specifically to provide secondary vehicular access to properties?

MS. VAN RIPPER: Uh-huh.

COMMISSIONER O'NEILL: I thought you mentioned that this alley has no vehicular rights, but you're pointing out that this has secondary vehicular rights, and that's what it calls out in the ordinance.

MS. VAN RIPPER: Well, okay. It was denominated an alley because they had to have an alley. And – but it was never improved to an alley standard. That's why, you know, this – it's not really an alley. That's what we're – we believe, given historical use, given the lack of any improvements to it. As the Ordinance also required at that time, you know, that it be improved.

So we don't think that secondary vehicular access really comes into play, because it's not an alley. It's an alley in name only.

CHAIRMAN STEINBERG: Thank you. Commissioner Schwartz.

COMMISSIONER SCHWARTZ: One more question. A minute ago you said not one side should have something over the other. But just – then you just made a statement that because of there's unanimity on the south, that all of a sudden they should have the rights over the people in the north. So which one is it? Are they both on equal ground, or do the south people have more – I mean you said that nobody should have a higher footing than anybody else, and then you're saying, well, wait a minute, we have unanimity, so we rule. Who has the rights, they all have the rights, correct?

MS. VAN RIPPER: They all have different rights.

COMMISSIONER SCHWARTZ: Okay. They all have rights to the alley, correct?

MS. VAN RIPPER: Yeah. They all have rights to the use of the alley, but the fact that they don't have the rights to the use, doesn't mean that people in the north can say, oh, we want vehicles now; that's the difference I'm saying.

COMMISSIONER SCHWARTZ: But the definition says they can have vehicle use?

MS. VAN RIPPER: Well, it's an alley in name only, is our position, as far as never paved, too narrow –

COMMISSIONER SCHWARTZ: So if it's not an alley --

MS. VAN RIPPER: -- never used.

COMMISSIONER SCHWARTZ: -- what is it?

MS. VAN RIPPER: It's an easement, a de facto easement.

COMMISSIONER SCHWARTZ: What do you mean, a --

MS. VAN RIPPER: Because of the passage of time and use the non-improvement matters, we believe it's more like an easement, than an alley.

COMMISSIONER SCHWARTZ: Go ahead. But there's still – there's still an easement there. The utilities would just go away, don't go away, dedications just don't go away,

you can't just all of a sudden, as a personal – as an individual, go and take that land away from the municipality and then all of a sudden you have squatter's rights. You don't have that. This isn't the ranch country where I can go out and have, you know, continuous use for seven years, and not have somebody come out there and disturb me, and all of a sudden it's mine. That doesn't work with public right-of-way or public easements. They just don't go away. They're there forever, until they're abandoned.

MS. VAN RIPPER: Well, okay.

COMMISSIONER SCHWARTZ: Thank you.

CHAIRMAN STEINBERG: We have one more quick question. Then we're going to have public comment.

MS. VAN RIPPER: We still have more after – yes, we have the little – Mr. MacLennan after me, and then we have the short little video.

CHAIRMAN STEINBERG: And then Mr. MacLennan is part of your --

MS. VAN RIPPER: Presentation, yes. I wanted to have someone from the neighborhood also perform their presentation. Because he was born and raised there.

CHAIRMAN STEINBERG: Will he be repeating things you said, or be entirely different?

MS. VAN RIPPER: No, he won't. No, he will not.

VICE-CHAIRMAN HEITEL: Was – just to clarify one more time on this timeline issue, was, at the time of the recordation of the plat, prior to ordinance in Scottsdale, this property was still in the City limits of Scottsdale?

MS. VAN RIPPER: Yes.

VICE-CHAIRMAN HEITEL: Okay. And at that time was there a definition of streets and alleys, not future definitions. Do you have that available for us?

MS. VAN RIPPER: We weren't able to obtain that. We went to the City Clerk's Office, trying to get both the Zoning Ordinance in effect at that time, and the Subdivision Ordinance in effect that time. We were only able to get the Subdivision Ordinance which was three weeks later. They're not going to be able to produce the Zoning Ordinance for us.

VICE-CHAIRMAN HEITEL: So absent any of that information, and given the fact that the plat was approved in Scottsdale prior to the Ordinance, one would have to presume that the plat was prepared in accordance with Scottsdale's then prevailing alleys definition and street definition ordinance, would they not?

MS. VAN RIPPER: Well, yeah. I think we could assume that, assuming, you know, everybody did what they're supposed to be doing at the time, yes.

VICE-CHAIRMAN HEITEL: Yeah, okay. Thanks.

CHAIRMAN STEINBERG: Okay.

MS. VAN RIPPER: Thank you.

CHAIRMAN STEINBERG: You're going to wrap up your presentation?

MS. VAN RIPPER: Yeah. We only have Mr. MacLennan.

CHAIRMAN STEINBERG: One other speaker, thank you.

MR. MACLENNAN: Mr. Chairman, and members of the Committee. I just want to thank you for letting me speak. And I want to - Thank you.

I want to tell you about a street that I grew up on. In 1967 I lived at 6445 East Calle Del Media, which at that time was the end of the street, before the two cul-de-sac properties were built. I had an older brother, a younger sister. We spent our time in the street, playing in the street, I learned to ride my bike, I learned to roller skate. I learned to play kick-the-can with my neighbors. We did a lot of really fun things at the end of that street.

And I lived there until 1991 when I got married and moved on. I had aspirations my entire life to move back. I thought that was one of the neatest streets I'd ever seen. And in January of 2000 I realized my dream and was able to move and then raise our three children.

The reason I give you the background, is because this is really a special place. I don't think you can call it a historic district, but I think you can call it a really special street, with really special people, many of whom have lived there since it was originally built and platted.

I understand you're talking about property rights on both sides. That's the law. That's totally understandable. But it also is really important to look at what happens to our street if they build driveways and pave the alley. I wrote you a letter, and I know you've probably got flooded with all kinds of e-mails, but in that letter what I said was, you certainly have the authority to recommend to abandon the alley, which would keep our neighborhood the same way it is today. You also can recommend not to abandon the alley. And if you do that, what happens is the bulldozers come through, they cut down the citrus trees, they cut down all the shrubs. They pave the alley, and as soon as the alley's paved vehicle traffic will be on that alley. It's going to be risky. And with all these other things that Ellen talked about, everybody talked about, those are important things, because it has its consequences from this.

But if that happens it forever changes Calle Del Media as a street. It affects property rights, it affects our way of life and the security and the lifestyle that we all live at the end of the street. So I only ask that the Committee take that into consideration. Property rights are very, very important. But historical use of property is also very, very important.

Now you can override sometimes decisions on how you want to rule. So think about that. And I'm very concerned also, for a lot of other neighborhoods. There's 90 miles of alleys in Scottsdale that are under-utilized. And what future cul-de-sacs, beautiful, you know, historic places can be completely changed forever, by somebody deciding that

they want to put a driveway back there and a guest house, which is their right to put those things on their property, but it forever changes the use of our property.

So I would only ask that the Committee think about that, and take that into consideration. I want to thank you for letting me talk. One thing I do want to make sure that you understand, is that the only reason that anybody on Lombardi Estates would say that they do not agree with the abandonment, is so that they could de facto change the use of this alley. And it is almost a de facto seizure of the land that did not exist for their use historically.

So I mean, there's legal angles to all this stuff, but that's just an accurate fact, otherwise, they never used it, ever, 40 years. There's no reason for them to not want to abandon it, unless they want to build more guest houses and have more traffic on that alley, to change our street. So please think about that. That's my only thing. I really appreciate your time. I do have one thing I want to – a very quick video of our street, and the history of the street, it will go quickly, I promise. And thank you again.

CHAIRMAN STEINBERG: Thank you very much.

Video Presentation

CHAIRMAN STEINBERG: Okay. Thank you very much. It's good music, very professional. Commissioner Schwartz has a comment.

COMMISSIONER SCHWARTZ: I have to say, you know, I don't know if this will sound insensitive, because we all live in neighborhoods, but we're here tonight to speak about the facts. Okay. If you want to speak you can fill out a card and speak, and we're all being fair.

But we want to talk about the facts tonight. We all live in neighborhoods, we all care about our neighborhoods. And frankly I know people on both sides of this. And you know what, it's not an easy decision. But when we come here in this Kiva, we're here to talk about the facts, let's keep it with the facts. Let's not be redundant, and let's talk about the issues. It's not easy for us to make the decisions up here, and frankly that is not – this is not place for those types of videos; this is about the facts. The facts of the case and the facts about property rights. Thank you.

CHAIRMAN STEINBERG: Okay. We're going to open public testimony now. And I'll ask you once again to please be brief. Most of you will have three minutes. If you've gotten allotted from somebody else, we'll give you additional time, but we really ask that you do not repeat things that have been said before, so we could make it brief and get the ruling in the case. And when you have 30 seconds left, this very pretty young lady who's selling vowels over here is running the clock, and she's going to sell you 30 seconds.

Now the first speaker is John Colton, who will be followed by Jonathan Levine.

MR. COLTON: My name is John Colton, and I've been a resident here since June of 1967, which was a year before Calle Del Media was finalized with a cul-de-sac and was completed with three six-foot sections on the west end. Really the alley's been a problem nobody's been using as long as we've lived in that house. There's been no

other use. And I think the issue today is not all the stuff we've been talking about, about a lot of different things, but public use of the alley as it stands today does not guarantee any vehicular traffic. The alley is nine feet wide. Plus three feet for SRP telephone poles. End of conversation. And the feelings that we're talking about vehicular traffic, that's the main issue, that's the only concern and we've been talking about a lot of other stuff, and wasting a lot of time. And I don't believe that any statute or any ordinance in the City of Scottsdale allows vehicular traffic in a nine-foot alley. It's that simple. Thank you.

CHAIRMAN STEINBERG: Mr. Colton, I have a quick question for you. Since you're an original resident, why has it taken so long for this type of issue to come up? Why hasn't this been brought to our attention before this time? You've had 40 years?

MR. COLTON: Well really, it's a simple deal. To begin with it's never been used, it's never been of concern. We only got concerned about it in with this, and we just decided to – that it should be officially abandoned, because the use of this alley was created strictly for utilities, for servicing the lots on Calle Del Media, where I live and it's not a reasonable use for that. It's also for public use, equestrian and pedestrian. It's never been used for, trees have grown, it's all over the place. That's the reason that - one of the concerns, as far as a new house, what happened there, we had no indication. All those houses on Exeter are serviced from Exeter. There's not one house on Exeter that's serviced off of Calle Del Media. And there was a faulty reference earlier about Lot 7 using that lot. Well, that happens to be in our coalition, Lot 7. It's in another subdivision, but it's at the end of our subdivision. And it's part of our coalition.

CHAIRMAN STEINBERG: Thank you, sir. Jonathan Levine, followed by Don Carson.

MS. RIDDELL: Chairman Steinberg, Wendy Riddell from Berry and Damore. I know I don't look like Jonathan Levine. I'm thinking I might be able to help expedite this a little bit, in terms of – I have cards turned in for five or six property owners that are opposed to the abandonment. Perhaps if you're comfortable we could allow – be allowed to speak first, and then it might limit some testimony.

CHAIRMAN STEINBERG: Okay. We're looking for those cards so that we could allow you the time. How much time do you think you need, Ms. Riddell?

MS. RIDDELL: Ten minutes if I could.

CHAIRMAN STEINBERG: Are you playing a video too?

MS. RIDDELL: No. It would be a little hard for me to top that video, although I do appreciate the music. No, and I will be as quick as I possibly can.

CHAIRMAN STEINBERG: Is Mr. Levine going to speak, or has he given you his time?

MR. LEVINE: Would you like me to say something?

CHAIRMAN STEINBERG: It's up to you.

MR. LEVINE: I can talk real brief right now. But do you want to go first?

MS. RIDDELL: I'd like to call Sam –

CHAIRMAN STEINBERG: Sure. Why don't you be the opening act for Wendy.

MR. LEVINE: My name is Jonathan Levine, and I'm the resident that had – is doing the guest house. I just wanted to first say that this a very tenuous situation, obviously, for the Calle Del Media. My intention was never to have this kind of an uproar. I've lived in Arcadia for over 12 years. I love the area, I have kids in the schools, in the district. And I love that part of Exeter, but I just want to say that when I designed the house, we're not car people. We put two cars in the front. We have in the design, the guest house in the back.

There has been usage of the alley by vehicles. I never really had any thought that it was going to be such a large issue with the Calle Del Media people. I wasn't asking for a variance, or a use permit. I didn't know I needed permission to design my house the way I did. And just to make the people on Calle Del Media comfortable, that is a very ancillary use for a car. And we have – me and my wife each own one car. We're not car people. When we move in the house we won't even have a car in that guest house. It's just for the potential to put a car in there, when possibly we need a third car.

So I've heard a lot of different things that there's going to be a lot of traffic back there. As far as I'm concerned, there probably won't even be a car in that garage for a couple of years. So I'd like to alleviate the people in Calle Del Media about that. I do sympathize with your concerns. I understand them, but I really don't think there's going to be much difference right now.

I did feel it was appropriate to sit down with the people of Calle Del Media and I did do that with Don Carson and Michael Dollin, and offered up a proposal that would actually limit the – more of the use – the potential use on the alley, because my neighbors on Exeter, I had a long meeting with them and had them basically give up their rights to use the east and west portion because of my situation. And I am, like I said, sympathetic to other people in Calle Del Media. I'm not trying to come into the neighborhood and have enemies. That's absolutely not what I'm looking for; it's just the opposite.

So having said that, you know, we've designed the house, we built the house, we intended to use it that way. And, you know, that's why we prefer not to be abandoned. And we do love the separation, the privacy that it offers. And that's basically it.

CHAIRMAN STEINBERG: Thank you, Mr. Levine.

MR. LEVINE: Thank you.

CHAIRMAN STEINBERG: Anyone have any questions? Okay, thank you. Now Ms. Riddell, I have a bunch of cards here. They're donating their time to you. So we're going to give you ten minutes.

MS. RIDDELL: Thank you.

CHAIRMAN STEINBERG: Should that – is that enough?

MS. RIDDELL: It should be.

APPROVED

CHAIRMAN STEINBERG: Okay, great. Thank you.

MS. RIDDELL: Thank you. Chairman Steinberg, members of the Commission, my name is Wendy Riddell, with the law firm of Berry and Damore, for your records, 6750 East Camelback Road, Scottsdale, Arizona. And it's my pleasure to be here this evening on behalf of Jonathan and Pauline Levine.

And I'd like to speak, just as Commissioner Schwartz has pointed out, to the facts of this case; that the property rights issue, the facts, the law as they relate to public alleys. So to start off, the question really before the Commission tonight is, should the alley be abandoned? Should the existing, the long-held property rights, rights held by property owners on both sides of the alley, Calle Del Media and the Exeter neighbors, should those be abandoned to protect – we believe that those should be protected.

Now City staff has taken you through the timeline, but just to briefly, I'll go over it again. The existing home that was on the lot that the Levines purchased was actually demolished back in October of 2004. They were processing their plans to the City for their new home, and the new permit was issued November 5th, 2004. And they subsequently began construction. It takes a long time, but it was well under way.

And it was finally at the end of that summer, many, many months later, that the pre-op for the abandonment occurred. And nearly a year later from this entire process beginning, that the abandonment application was submitted.

What's important about all of that, at least to us, is that there's been discussion here or certain statements made that somehow Jonathan should have taken it upon him, or the Levines take it upon them, to go out and talk to the neighbors about the alley. But again, they weren't requesting variances, exceptions, waivers, nothing; everything permitted by right. But the applicant who was filing an application, who was going through the public process, never took the time to walk around the corner and to talk to any of the neighbors on Exeter. Never took the time to talk to any of the affected neighbors, before filing this application, or even during this application. And I think that's something that needs to be carefully considered.

Now so many of the points made by the applicant's counsel, one of them is that the alley was never intended for vehicular use. And frankly we just feel that's nonsense. The original public dedication very clearly anticipated vehicular travel. And one of the things I point out to illustrate this, is the clipped corners. The clipped corners so that cars could actually traverse that. If you just had pedestrian access back there, or bicycle access back there, or equestrian access back there, you wouldn't have to clip those corners. Now I guess - unless they're anticipating some high-speed roof rat activity - that probably, looking at this a reasonable person would assume that this was intended for vehicular traffic.

And again, if the alley was not intended for vehicular use. The original dedication language, 1964, "hereby dedicates to the public for uses shown on said plat." In the applicant's statement she also said, "Well, that west end, that was only depicted as a temporary alley easement on the plat." Frankly, that's not very candid, because there was subsequently a permanent dedication made when lot 7 was split, and a new 12-foot

alley was dedicated under the City of Scottsdale's jurisdiction, because that's all that was warranted.

And the City Zoning Ordinance itself in 1964, again the definition of an alley, how we know that an alley was intended for vehicular traffic, talks about "a passage or way open to public travel, which affords generally a secondary means of vehicular access to abutting lots," exactly what we're talking about here. It is not intended for general traffic circulation. We meet the precise definition of an alley.

And even assuming, arguendo, I love presentations where I can use language, even assuming arguendo if it's a half-alley, half-alleys are 12 feet in width, versus a six or eight feet. If it was a true half-alley, the 16 foot alley, it would be eight feet. And the reason that a half-alley is 12 feet in width, this is important, is so that it can be safely traversed by vehicles.

There were a lot of statements made by the applicant, that this does not meet the City's current standards. Well, it doesn't meet the current standards for a full alley, perhaps, but even if you say it meets the standards for a half-alley, that can be safely traversed by a car.

And the other argument is, that somehow, historically, the Exeter neighbors, Mr. Levine's rights, shouldn't count, because they have not been historically or consistently used. But I would point out that the north/south portions of the alley have been consistently used. We all saw the pictures, we all saw the tire tracks. The vehicles according – and also according to the applicant's counsel, this is in the letter that was submitted to all the Planning Commission members, and it was discussed tonight, the alley has been used for public utilities, equestrian and pedestrian travel.

According to them the alley has been in use, again protect development rights.

And of course the permit that was issued to the Levines to use the alley in accordance with State Statute, the recorded plat, the Zoning Ordinance, and in conformance with all the applicable rules.

And then I'd also point out, so that you're well aware, that this Commission has refused, I know there was some discussion earlier tonight, to abandon used dedications in North Scottsdale, such as GLOs, to preserve future opportunities. Now we'd certainly put out there, there's a lot of discussion about south Scottsdale, north Scottsdale, central Scottsdale. But is south Scottsdale going to be treated any differently than north Scottsdale?

This is just simply a map that shows, you can see a number of pedestrian gates. There's also some vehicular gates on the east and west end for the north and south portions of the alley.

The alley is not engineered for and is too narrow for safe use by vehicles. I guess that's true if you take the exhibits presented in the previous presentation verbatim. But again, the alley was specifically designed for public vehicular access; that's why the half-alley is a 12-foot alley. And we certainly acknowledge that the alley will need to be cleared and appropriately surfaced, required by the Zoning Ordinance.

And we'd also point out that the failure to keep the alley cleared, actually in violation of the current City ordinance, does not obviate the requirement that it be cleared, nor does it create some sort of historical property right in a public alley. Letting the alley become overrun does not create a property right.

And then again to the point that the alley is not engineered for, too narrow and safe for use by vehicles, when the City of Scottsdale's own design standards permits a ten-foot driveway. So certainly if a ten-foot driveway is permissible, a 12-foot alley must be permissible as well.

And this was actually a picture we took today. This is the western portion of the alley. It's 12 feet, and as you can see, a picture speaks a thousand words, there's plenty of room, there's plenty of room to go through with a car, and you can see for yourself.

This is another video. This is on the east end. This is the clipped corner I was talking about. And this is again to show there's plenty of room available to turn. Historical use of the alley, the gate that's there. And again, this is a portion of the alley that is cleared, plenty of room for a car.

The vehicular use of the alley would unreasonably increase traffic in Calle Del Media. Again, just to keep this in perspective, we're talking about one car, one lot, and as Jonathan himself described to you, extremely minimal use. And everyone knew, everyone that bought into Calle Del Media, just as the Exeter neighbors, knew or should have known with the exercise of reasonable due diligence of the existence of a public alley. And all the abutting properties have an equal right to access.

We're again, you've heard some discussion about a settlement. We're not the applicant, we have a vested property right, but we took it upon ourselves to go out and to propose a settlement that would ensure no more than one new lot, the Levines' lot, would have vehicular access to this alley, and it was flatly rejected. I can honestly tell this Commission, we have done everything we can do to bring settlement to this issue.

And the other – the notion that this also going to create an unreasonable increase of traffic in Calle Del Media. That's certainly never proven to be true in Arcadia, or anywhere in south Scottsdale, where alleys are the part of the character of the area. And certainly you saw the exhibit that shows the miles and miles of alleys.

This is my favorite, "alley is a corridor of crime". The applicant states, the City Police Department found areas of unused land providing a hiding place for criminals. Well, we're proposing to solve that. We're proposing to clear that, and it will be used, and luckily the alleged crime, I think, will go away. But the difficulty with that, is you'll notice the applicant hasn't produced any evidence of the crime, because as we've searched the City's websites, there are no crimes that we can find that are actually reported originating from the south.

The notions too that several burglaries where criminals parked in alleys, and we would query whether that's really a reason to abandon an alley. A lot of crimes occur because garage doors are left open, and certainly we're not going to go around and suggest that no one should have garages anymore. So not a reason.

The abandonment is necessary to ensure quiet use and enjoyment of all properties. This goes to the point where the gentlemen who spoke very well, suggested that the only reason the Exeter neighbors want this, is because they're all going to build garages. Well the reality is, they wanted to have quiet use and enjoyment of their property, it's necessary as a buffer for them. It helps prevent the very sort of invasion of privacy that's been discussed. It ensures the privacy that has been there for four decades, here and throughout Arcadia.

I will wrap it up quickly, Chairman.

CHAIRMAN STEINBERG: Thank you.

MS. RIDDELL: Again, the abandonment is necessary to ensure the quiet enjoyment, that accessory structures, if the alley were abandoned, could be built by the property lines, not preserving the quiet enjoyment.

And finally the point was, as a matter of public policy, should the alley be abandoned? The Commission should consider carefully the public policy message it wants to send. Is it that historic alleys will be abandoned on a piecemeal basis in the face of neighborhood dissension, or an applicant must work with the neighbors to create consensus prior to initiating an application that impacts everyone? Will you reward an applicant who does not work with the neighbors? And is south Scottsdale going to be treated differently than north Scottsdale?

And finally my last slide, this is our – my impression of Letterman here, our top three reasons why the alley should not be abandoned, and why existing long-held property rights should be protected.

The first, does the City issue a permit to the Levines to use the alley? North/south portions of the alley are being used by vehicles, and the alley has been used historically for equestrian and pedestrian access.

Number two, the alley preserves the quiet enjoyment of all the property owners, as the entire alley serves as a buffer.

Finally, it's bad public policy in light of the neighborhood dissension and an applicant that simply refuses to work with the neighbors. With that we respectfully that the application be denied, and I'd be happy to answer any questions.

CHAIRMAN STEINBERG: Does anyone have any questions of Ms. Riddell? No? Thank you very much. Don Carson, followed by Trent DeBusk.

MR. CARSON: Before I get my time, I'd like – there was a permit pulled for a house on lot 7, and could I ask if they indeed are going to have a guest house there? May I ask that of City staff?

MR. GRAY: The current plans for lot 7 show no guest house or access from the alley.

MR. CARSON: Okay. So they're not requesting – okay. First of all I want to thank the Commission very much. When I came here last February it was the first time that I had heard about this. I want you to know that we have tried, we've sat down with Jonathan

and Andrew, and Michael Dollin and I have tried to come up with something that would satisfy 19 – 17 other homeowners. I don't know if we were able to do that. Obviously that's why we're here. I don't know if we ran out of the time or what the issues, but we just – it just didn't work out.

I will tell you that in sitting here an hour and a half, and this is a big deal to us, and I like it when people make eye contact with me, and I've seen people not making eye contact with people. This is important to us. When somebody comes to my restaurant and has a birthday, it is incumbent upon me to go to the table and say happy birthday. If I miss a birthday, I've ruined somebody's birthday; they only have one a year. This is important to us.

I think that – that if I would have known about this you would have heard it from me before February. I think that no good deed goes unpunished. And it is inconceivable to me that folks on the north side of the street many years ago gave 12 feet. They had 18,000 square feet, folks. The folks on Exeter had two and a quarter acres. Now you're going to tell me that in a practical, in a real sense, you're supposed to protect this; that's your job. Forget the law for a moment, let's just be human beings. Two and a quarter acres, you can't build something that can support your lifestyle, that now you have to intrude upon me, who had nothing to do with anything. I just happened to live there ten year. I wouldn't have bought a house on a cul-de-sac, because what's going to happen, is Jonathan built the home. He's – but what about the other guy, what about this gentleman I just met tonight, is he going to want to?

I live directly across from the west alley. I didn't want – I didn't buy on a cul-de-sac to have cars coming down. Now, I've heard law, this, that. It's been a piece of crap for 40 years. Nobody's used it. Now somebody wants to use it, and it's not right.

George Will is a good customer at the restaurant, that's why I subscribe to Newsweek. And he wrote an interesting article this week, you all should pick it up, it's about legal theft, it's in Norwood, Ohio. It sort of dovetails on the – okay, I'm almost done. She talked an extra minute, I might. I want you to look me in the eye. I've been on a lot of committees in the City, I've done a lot of good stuff, and it's not right, guys. I don't know how it works out, but it's not right. It's not fair. It was never fair. There was something that Jonathan – rather, I'm sorry, lot 4 had a consulting company. They never knocked on my door, and if they did, they never left me a card that they knocked on my door. There's been a lot of inaccuracies, and let's try to straighten it out.

CHAIRMAN STEINBERG: Mr. Carson, we have one question here. Mr. Schwartz?

COMMISSIONER SCWHARTZ: Hi Don. What fell short in the negotiations? You were talking between the property owners, yourselves and –

MR. CARSON: Well, there is a committee of two. Michael Dollin and I, Jonathan and his representative Andrew Cohen, and again, these are tough times. You've got four people that are deep – six people who are deeply impacted. But I just live across – I live on the other side, so all I want – what – if I tell you that I'm nine feet tall, and I'm Pinocchio, my nose will grow. If somebody tells you that there's been traffic on the west end of that, their nose show grow and break that screen up there. It's an absolute fabrication.

I'm home during the day, the restaurant is open from 5:00 to 10:00. There's no traffic on the west end of that alley. And the traffic on the other end is some guy having his employees come and pick up stuff so they can go build another home.

COMMISSIONER SCWHARTZ: Don, is there anyway to build a consensus between the neighborhoods, for access?

MR. CARSON: Well, I guess time would be the only -- you know, I can't speak for the other neighbors, I can only speak for myself.

COMMISSIONER SCWHARTZ: Okay. But you're willing to move forward and try to work out a favorable solution for everybody?

MR. CARSON: I -- here's -- yes, in short, yes.

COMMISSIONER SCWHARTZ: All right. Thanks, Don.

CHAIRMAN STEINBERG: Don, don't go away.

MR. CARSON: Okay.

CHAIRMAN STEINBERG: We want to look you in the eye.

MR. CARSON: Great.

CHAIRMAN STEINBERG: Okay.

(Laughter)

COMMISSIONER HEITEL: I'll have to put my glasses on. Could you maybe help me understand, and maybe that was what Commissioner Schwartz was trying to ask, and I -- maybe I didn't hear the response. If a proposal is made to resolve this alley issue with a condition that there would just be one access from this property owner who's already been given a building permit, and done all this improvement, why, tell me -- just -

MR. CARSON: In my opinion?

COMMISSIONER HEITEL: Very clearly why has the neighborhood flatly rejected that?

MR. CARSON: Because we wouldn't even be -- okay, I think that there were a lot of reasons. I think they're worried about their fences. I think they're worried about property that they felt was theirs. I think they're worried that if Jonathan gets access, then lot number 2 is going to be driving in and out, and the --

COMMISSIONER HEITEL: But that wouldn't happen, though.

MR. CARSON: Well -- but we couldn't address it. There were just concerns that could not be addressed in time, I think.

COMMISSIONER HEITEL: Okay.

MR. CARSON: We have the – and by the way, one of my goals in my life was to shake the hand of the President, I've done it. I've shaken – I've had soup in the clubhouse with Willy Mays, and I think I'm entitled to go home at night after working long hours, as you do as a restaurant guy and have peace and quiet. And that's all. I think it's a fair thing. I think everybody's entitled; a man's home should be his castle.

Thank you.

CHAIRMAN STEINBERG: Thank you, Don. Trent DeBusk. And Trent, you're followed by Anna Colaric.

MR. DEBUSK: Good evening. My name is Trent DeBusk, I reside at 6521 Calle Del Media. I've been a resident of Scottsdale for the last ten years. I'm a proud citizen of the United States, and I'm here tonight to talk to you a little bit about what it feels like to be on the street and the thing, kind of echoing some of what Don's said, the thing that's most troubling to me is that I really get this strong sense that the opinion and decision has already been made this evening.

And so it's most troubling to me that, and I'm just going to read a few lines I've got from a memo I've prepared a few days ago. But the most troubling concerns I have regarding this, is number one, how does a person who does not reside on Calle Del Media submit building plans with the intent to use an alleyway which has never been used since it was created, for access to a guest/worker house, without first notifying the homeowners on Calle Del Media?

Number two, how does the City of Scottsdale approve the plans for the above homeowner, without first considering the impact and the concerns of those residents on Calle Del Media?

Number three, why is that a request or a proposal to abandon the alley requires the posting of signs, with the intent to notify the impacted parties, and receives an actual hearing at the Planning Commission, while someone who wants to build a house on Exeter can submit plans with the intent to clear and pave and unused alley on Calle Del Media, without first notifying the impacted parties? Does this not seem a little odd? If I'm a homeowner on Calle Del Media and I would like to have 12 feet of alley behind my house declared abandoned, so I can extend my fence line and increase my property value, I first need to file a request, notify impacted parties and have the proposal reviewed.

However, if I live on a completely different street and want to build a guest or worker house in the back of my property and use the narrow 12-foot alleyway on Calle Del Media, again, which has never been used by the public or the City, as a private entrance and exit for my guest/worker house, all I have to do is get approved from the City of Scottsdale. I do not have to notify or gain approval from anybody, or any of the impacted homeowners on Calle Del Media.

I just – I feel like if the clock was spun back 6, 8, 12, 14 months, and somebody in the Commission would have taken the time to understand that this was an alley that started and stopped on Calle Del Media, then maybe had thoughts and concerns about the people on Calle Del Media, we would have never got to this point where we are tonight.

Because I can't believe that any of you sitting in your chairs, would feel any differently than we do, here this evening.

I mean, we don't want the increased traffic. Well, I have a two and a half year old, I do not want her to be run over by somebody who's in somebody else's backyard, that shouldn't be on the street to begin with. And I'm very, very concerned about the way people are really looking at this. Thank you.

CHAIRMAN STEINBERG: Before you go, we are totally impartial, and we look for the facts, and property rights are really important to us. So we're trying to be very, very impartial to –

MR. DEBUSK: I understand that. You keep talking about the property rights on both the south and the north side of the alleyway. But what about the property rights of the homeowners on the south side of Calle Del Media, which are also going to be impacted by the people who drive up and down our alley? You're talking about 19 homeowners versus six. Thanks.

CHAIRMAN STEINBERG: Okay, and Mr. Debusk, I think the City will respond to some of your comments during the staff analysis. So we're not ignoring you. Anna Colaric and Kenneth Johnson will follow.

MS. COLARIC: Please don't start my time yet. I'm Anna Colaric. But what is the name of the gentleman in the blue shirt? Schwartz. Wouldn't we want to wait 'til he comes back, so that he could hear my discussion about the --

CHAIRMAN STEINBERG: I'll tell you what, we'll switch you with Kenneth Johnson, if that's okay with Mr. Johnson.

MR. JOHNSON: Should I be there?

CHAIRMAN STEINBERG: Would you like to speak?

MR. JOHNSON: Yes.

CHAIRMAN STEINBERG: Mr. Johnson?

MR. JOHNSON: Yes, I'm ready.

CHAIRMAN STEINBERG: Okay. You've got three minutes, thank you.

MR. JOHNSON: Thank you. I agree with Trent, I think the expression is *alea iacta est*, which means the die is cast. I believe that this is a standard management practice of managing change, and has nothing to do with either side of the alley. It's been a done deal.

My problem that I have, is I had this two pages of information, after reviewing the City's Transportation Department documents, the design standards and policies manuals and code of ordinances. And I don't see anything in the definition of the specification that relates to those at all. That is, those ordinances are not specifications. You have basically declared that this is an alley without specifying the alley.

What you should do, okay, and I'm coming into geometrics. Geometrics is a term that is used by the Transportation Department. I don't understand where the transportation is coming from; that's another problem. Where are they? You can't have, okay, a statement and declare it a definition without some set of metrics to go with it. My – so I don't – I see – I get system definitions from, you know, two or three city staffers, the ordinances, and there's probably – there's probably others. Okay. But none of them define what the hell the alley is.

A way around that, okay, I would suggest that the passage, that some of the passages that have been presented as an alley, is a passage or way open to public travel that - which is in accordance with chapter xxx, whatever that be, of the 1964 design standard. You can't say this is what it is. What was the standard in 1964? You've got to come up with a specification. I have one line of point. From the Design Standards and Policies Manual, okay, there is a statement, and I've shortened the statement. "Abandonment should alleviate a significant problem and not create a new problem." Thank you.

CHAIRMAN STEINBERG: Thank you very much. Anna Colaric, to be followed by Nancy or John Colton

MS. COLARIC: Can you hear me okay? Well, there's several reasons why our request for abandonment is sound, but I'm going to only touch on the issue of safety and crime prevention. We don't want traffic behind our home. Our house sits on part of the alley that doesn't have any vegetation, but there's never any cars there. There has never been any cars there since we have lived there, which is six years.

We would like to secure this area and provide a higher measure of safety for our homes and our families. I've spoken to Scottsdale Officer Cory Snead (phonetic) our District 1 crime prevention officer. According to Scottsdale Police Department, he tells us that the City is well aware that alleys are an opportunity for criminals. When not accessible by vehicles, unused land provides a secluded place for people to hide, to drink, to do drugs, to create mischief, or worse, and go unnoticed. When the land becomes accessible to vehicles, it is even easier for criminals to drive into alleys and break into homes. They cut locks or climb over fences.

We have, I'm surprised that the attorney for the Levines did not discover this, but we have a prime example of this exact type of crime just to our south in the subdivision of Sherman Heights. A police department alert dated January 17th, 2006, describes several burglaries, burglaries that have occurred in this very manner. They park in the alley, they cut the fence, or the climb over the wall, cut the locks, or climb over the wall and break into the back of homes. That's an ongoing, I don't think it's been solved yet. That's a real concern this City has and is well aware of.

If you think our neighborhood is safe from crime, all you need to do is access the files available from Nancy Mitchell in Scottsdale's Crime Analysis Unit; Nancy Mitchell. She has – she can access the numerous car thefts. There was just a car theft on Exeter, I heard. Burglaries, robberies, and some of my neighbors have evidence of people climbing their back walls. We want to secure that area so that we don't have that added problem back there.

The City itself acknowledges the criminal problems with alleys. Why then would the City knowingly put citizens in more danger by disapproving our request to abandon the alley

and secure our land? Why would the City even consider allowing the land to be cleared of citrus trees and opened to traffic? The City of Scottsdale has a responsibility for our safety. They have a responsibility not to create conditions conducive to its citizens becoming victims of crime. And the idea that the builder, Nash [phonetic] Construction, did not know that that alley was in use, is ludicrous. They live on that alley. They know, they know there aren't cars back there.

The two times that we've had people back there, it was the Levines' people of some sort trying to do something back there, and we called the police both times and had it stopped. They knew there was an abandonment in process – one more second. And under consideration. And yet they still went ahead and tried to bulldog their way through it. And I think that's what's happened all along.

In the tax records it doesn't even say who owns that property. We went over there a few times and got no response from anyone. We found out it was being – things transpired, my husband will talk more about that. But thank you very much for listening.

CHAIRMAN STEINBERG: Thank you. Thank you.

MS. COLARIC: Do you have any questions?

CHAIRMAN STEINBERG: Any questions?

MS. COLARIC: I do have that bulletin, if you don't believe me. I mean, from Scottsdale, about the theft, the burglaries.

CHAIRMAN STEINBERG: We'll check it out, thank you. Nancy Brunkhorst.

MS. BRUNKHORST: I'd like to give my time to Shane Powell, because we intend to say the same things. And he's speaking also.

CHAIRMAN STEINBERG: Thank you.

MR. POWELL: Thank you. My name is Shane Powell, and I own the lot number 7 on Exeter, and I do want to assure everyone here, because this is a community and a neighborhood, I will not be building a guest house, I will not be accessing it by vehicle. But I did rely on that property with the alleyway, that was – that has been there for 44 years, for access for maintenance, or service, or what-have-you. Not that that would be a regular pattern, but one that made that attractive when I purchased this lot just about a year ago.

I've just received permits to start construction, which we're beginning to do, but it's important that, you know, my rights be spoken as well, because I did rely on that alleyway. I do want to point out in going back through there, that it is messy, and it is not clear. Everyone is concerned about that being a breeding ground for crime. I am willing to contribute and pay for that to be maintained on a regular basis, be kept clean and safe, so that there aren't the bushes for the criminals to, you know, hide in, or someone who's not supposed to be there, to hide.

And also, just in parting, and looking at the visual of those telephone poles, I've walked back there, and the representation that was made that it sits four feet, seven inches out

into the alleyway is not correct. There is a full nine-feet clearance around that pole. So a vehicle could get back in there and use, and I don't believe it's going to be regular. Mr. Levine, his intentions I believe, and I just believe this is not going to be a regular use, to set everyone's concerns aside. Thank you.

CHAIRMAN STEINBERG: Thank you, Mr. Powell. Chuck Golab.

MR. GOLAB: I'm Chuck Golab. My wife and I lived at 6446 East Calle Del Media. I've been in the neighborhood for 32 years. Six and a half of those years, the first years, were on 67th and East Montrose. The reason I'm bringing that up, is they just had a successful alley abandonment, that was here, that was through your people. So it took six to seven weeks to get it done. Our abandonment started in July, and here we are seven months later, we're still working on it. Just thought I'd bring that up.

Now my wife's a high school teacher in the Scottsdale district, Arcadia. I've been an insurance agent for years, I have offices here in Scottsdale. And we've been on Calle Del Media now for 26 years, and we live next to that western part, the other party's attorney drove into today. She had a heck of a time coming out of there. She ran over the garbage bag, opened them up, grass is all over the place. She could not navigate very well in that alley today, I can promise you. I saw it, we all saw it.

But anyway the 26 years I've been there, there has not been any traffic, vehicle traffic in that alley. My palm trimmers come in, trim the palms, carry it out to the street. The utility trucks, every two years they come in and trim the trees. They cut it, they carry it out to the chippers in the street. And so there's no vehicles, you know, driving in that alley at all. My neighbor and I keep the land cleaned out and that's why it looks like it's open for traffic. And then about two or three times a year I send my yard guys back behind my property to clean out the dead brush, fallen branches and cut the grasses to keep the fire hazards down. And that's what we're trying to do. Now the reason we're really here, I think, you know, I think if the only access -- had access from Exeter into the alley, we might not be here. I think the problem is, is the access to this is on our quiet cul-de-sac, get in and out of our alley. But the Exeter drive all the way around the [INDISCERNIBLE - 7:17:57] to come in. That's the problem we are faced with, that's why we're a little upset about it.

I'd like to close with the thought that, you know, there's no half answer here. Maybe King Solomon in the Old Testament he made the decision to cut the baby in half, give half to one and half to the other [INDISCERNIBLE - 7:18:12]. Thank you very much.

CHAIRMAN STEINBERG: Thank you, Mr. Golab. Edwin Johnson, followed by Lana Carson.

MR. JOHNSON: My name is Ed Johnson. I live on the other side of the west alley from Mr. Golab, and we keep the alley clean. I want -- I would just like to emphasize that there hasn't been much traffic ever, on that part of the alleyway. That's -- I've observed one or two times a year, Cox or Salt River drives a truck up the alley, and then when it gets -- they finish with their work, he has to back out of the alley, because there's no way of turning around.

So, I would just like to emphasize that use of the alley has been very, very sporadic, very – almost non-existent. And I live on the other side, the west portion of the alley. Thank you.

CHAIRMAN STEINBERG: Thank you, sir. Lana Carson, followed by Wayne Colaric.

MS. CARSON: Public speaking is not my forte, so please bear with me, as I review some of my issues. My passion is for the alley abandonment, our children, my neighbors, and the impact it has on our daily lives.

I'm a 52-year-old mother of three. I have always had a home on a cul-de-sac for one main reason, and that was for safety. Why put our children in danger? This open driveway is a dangerous passageway to our cul-de-sac. Why would it be allowed for a homeowner on Exeter to use our street as their own private property? What about our privacy? What about our quiet, safe neighborhood?

The City should think about our issues and how it would impact our daily lives. My main question to all of you is, will you be able to look at one another in the eye if something tragic happens on our quiet, safe cul-de-sac street? If this was your street, your home, and especially your children, what would you vote? Thank you.

CHAIRMAN STEINBERG: Thank you very much. Wayne Colaric, followed by Cody Koziol.

MR. COLARIC: Good evening, I'm Wayne Colaric. I'll give you a little timeframe. In early June of 2005, I met with Greg Williams, the Senior Planner, and pursued, and asked about pursuing a formal abandonment of the alley. I explained our proposal and the scope of our request. Mr. Williams advised me to seek or bring thought from all the owners of the lots that originally dedicated land towards a future alley.

Mr. Williams further advised me that this did not include lots to the north, and that's along Exeter, as that subdivision was never required to dedicate land or to make this area legal full alley. And that's why it was mentioned by Wendy, that I never requested anything from the people in Exeter, because I was told by staff that I didn't really need to talk to them.

Mr. Williams stated that if the abandonment was for some reason denied, vehicle traffic would still never be allowed in the area. He said 12 feet wasn't wide enough. Am I lying? Okay. I'm not. Mr. Williams gave me the packet of information to start the abandonment procedure. John Colton and I began working on this. We were very surprised by the request, if people were wondering about the timeline, the request that we have new title insurance for each piece of property in question. A very expensive item to get, okay. We again met with Mr. Williams. I turned the packet in, I completed it on October the 6th. I met with Mr. Williams on October the 7th. By this time we had an idea that Mr. Levine would be probably be using the alley as a driveway. Okay.

After the – I was told by Mr. Williams that my part in this request was complete, and that the City of Scottsdale would proceed with the matter. They would post signs and scheduled a meeting. I have no idea why our first meeting was not scheduled until February 22nd of '06.

I feel as though we were lulled into a false sense of security by the Planning Department staff, and we assumed the City of Scottsdale would unbiased. It does not seem right that the personal desires of one homeowner should change the character of an entire subdivision, and that we should be burdened as a result. Thank you.

CHAIRMAN STEINBERG: Thank you very much. Cody Koziol. You have a question?

COMMISSIONER O'NEILL: Mr. Colaric, did you mention that you, when you were filing the application, that you were unaware that lot 4 intended on – I mean, that their building permit had been approved and that they –

MR. COLARIC: When I made the application I didn't know that they were going to do that, at that time.

COMMISSIONER O'NEILL: All right. Thank you.

CHAIRMAN STEINBERG: Okay. Cody Koziol.

MR. KOZIOL: My concerns about the alley is, there could be kids back there, and they could be hurt. And the telephone wires could be hit. And there could be another car coming down the way, and it could hit – it could get into a crash, and there could be a fire back there.

CHAIRMAN STEINBERG: That's not three whole minutes, do you want anymore time? You're good. We like guys like you. Thanks Cody. William Leonetti (phonetic), followed by Jennifer MacLennan.

MR. LEONETTI: Thank you. My name is Bill Leonetti. My wife and I live at 6532 Calle Del Media, and we have lived on Calle Del Media for 18 years. The reason we moved on that street is specifically because it is cul-de-sac. You've heard this from other people. We've raised our three children on this street. It's quiet, it's boring, there's very little traffic and that's why we love it.

You asked us to speak about facts. Number one, I live at the very east end of the property in question, so the 16 feet of the alleyway adjoins my property. I have never been contacted by anybody on Exeter during this process and asked what I thought about the alleyway, the use of a private driveway, or anything; that's number one.

Number two, as far as vehicular, like I said, I've lived on this street for 18 years. Up until the home built on lot number 2 there was no traffic in that alleyway, even the 16 feet, other than utility trucks. Once the construction started on lot number 2, there was use for delivery. Since the house construction on lot number 2, that 16 feet on my east side is used, as spoken, by construction trucks that back in, commercial cement deliveries, and the equipment, and whatever needs for storage.

Recently there has been a need to prove usage for that 16 feet, and so several private vehicles would take their time, throughout the week, driving up and down the alleyway. Now this is a dead-end alleyway. So what happens is, is the vehicle drives to the end of my lot and then has to back out.

I spoke personally with Frank Gray about this as a concerned citizen because we've had vehicles for several weeks driving in and backing out and there was concern about children on the block. We spoke personally. He told me that he would take care of it and speak to the people at lot number 2 and ask them to stop. Also, the fact that this -- denial of the abandonment will severely impact me probably more than the rest because I have the main entrance into that alleyway. So what will happen is, my lifestyle, the fact that there's cars in and out all of the time, the quietness, the noise, the security issues, and of course the property value. I have practiced as a physician and a surgeon for 25 years in this State and like most human beings, my most important valuable asset is my home. And the last thing I want to see is the value of that home drop.

The other concern is that it's my understanding that not all of the voting members of this Committee have actually walked the alleyway. So what that tells me, if that's true, you are making decisions without all of the facts. And in my line of work, if I make decisions on people's livelihood that impact them and I don't know the facts, I'm sued. That's called malpractice. And so whatever the decision tonight, I would ask that your recommendation to the Council be that you ask every one of them, before they make a decision, to walk the alleyway and see what they're dealing with. Thank you.

CHAIRMAN STEINBERG: Before you go, I have a quick question. When you built your home, did you do some due diligence on the use of the alley? And did you make any assumptions as to whether vehicles would be allowed before you purchased the house?

MR. LEONETTI: My inquiry to our realtor was that it is not used for vehicular, other than utilities. And that was absolutely true, until the home on lot number 2 was built.

CHAIRMAN STEINBERG: Okay, have you made any complaints to the City concerning the operation on lot 2?

MR. LEONETTI: I have called both Greg Williams and Frank Gray about vehicles driving in and backing out, which is basically a function of a one-way alley, which is illegal in your City.

CHAIRMAN STEINBERG: Thanks Doctor. Okay, Jennifer MacLennan, followed by Ken Kozial.

JENNIFER MACLENNAN: Chairman Steinberg, members of the Commission, thank you very much for your time. Thank you for listening to us. Thank you for those of you who have been out to the property; we appreciate it. I'm an attorney. I am usually sitting on the other end of this, representing the cities, towns, school districts, advising you all on—not you personally, but those entities and so I understand how difficult the decisions that are making are. And I appreciate your efforts.

Mr. Levine, we appreciate you meeting with representatives of the City. When this came to base, I suggested to a neighborhood coalition that we have the parties meet with all counsels; sometimes if you get the lawyers in a room some of the world work can be done. And we wish that we could have gotten a compromise to you; we couldn't.

In the last while, in my perception, this would not have just been limited to Mr. Levine, that it would have not abandoned the rest of the alleyway and that it would have not abandoned the access that's currently being used by lot 2. That's my understanding. I

was not a part of those negotiations because it would have been improper for me to do so as an attorney.

If you are not inclined to abandon the alleyway for all of the reasons that we've listed and I might bring up my three children who play at the cul-de-sac, then I would ask that you limit access to Mr. Levine. I think that you have the ability to make recommendation to City Council and that's the one I'd ask you to make as an alternative. Thank you.

CHAIRMAN STEINBERG: Thank you, we've got one follow-up question for you before you leave, that's from Commissioner Heitel.

COMMISSIONER HEITEL: My question is the same question that I just asked earlier; Why, if you're suggesting that that be our recommendation, why didn't the neighbors deliver that to us? It sounds to me like that's what was offered.

MS. MACLENNAN: And I will tell you, in all honesty, I was not a part of the negotiations. I heard about them second hand because I can't be involved technically as an attorney for meeting with all parties. But my understanding was that it was not limited to Mr. Levine, and it would also have denied access to lot 2 for the current uses they're using. And that the abandonment of the west part of the alley was not included; the alley that sits directly across from me. We were not able to come to agreement. Also, it was very difficult because there were certain homeowners on the north side of our street, that were not affected. Mr. Leonetti, Mr. Colton, Mr. Colaric, they would actually not have as much land back because they would still be granting Mr. Levine access. So it disproportionately affected our neighborhood. And the third reason is I don't think we had adequate time.

VICE-CHAIRMAN HEITEL: So really in fact, I mean, I almost hearing three different reasons for this request for abandonment. There's occasionally a reference to abandon the property and give it back to some of the property owners so that they can --

MS. MACLENNAN: And I think that's a traditional abandonment.

VICE-CHAIRMAN HEITEL: And that would be a classic abandonment. There's much conversation from some of the supporters of the abandonment that really a major issue is solely traffic and some of the supporters of the abandonment even have told us tonight, they're continuing to use the alley for its intended use. You know, trucks go in there to service utilities, they're dragging --

AUDIENCE: No, no.

MS. MACLENNAN: Shhh. We've got to listen to him like he listened to us.

VICE-CHAIRMAN HEITEL: Can I foster a conversation or is there no conversation here? I'm asking a question. And I'm asking the lady --

MS. MACLENNAN: There's disagreement about how much traffic there is. I can say that, but certainly in some of it, there's no traffic.

VICE-CHAIRMAN HEITEL: So there's multiple issues in regards to those hoarding the abandonment?

MS. MACLENNAN: Correct.

VICE-CHAIRMAN HEITEL: Okay, thanks.

COMMISSIONER SCHWARTZ: So, there's a deal on the table for Mr. Levine, but it precludes the two properties on the end, so how will I -- let's say I'm the property owner on the end. You now own whatever lot that has the chunk in the backyard, okay? How are you going to feel if Mr. Levine goes and cuts a deal so he can get use that precludes me or you of a prescribed use you've had, you've been using constantly, for years. Is that fair?

MS. MACLENNAN: I think that's why we weren't able to bring a compromise to you, is because there are so many people involved and so many parties. And I would agree with you; Mr. Levine I think made a consolidated effort to try to get agreement of all of the homeowners on Exeter. I know that the Calle Del Media Coalition also tried to make a consolidated effort that's led people involved to get a compromise out of.

COMMISSIONER SCHWARTZ: So you're an attorney and you have represented cities -
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MS. MACLENNAN: I have.

COMMISSIONER SCHWARTZ: -- who have an alley. And an abandonment with people having use on it is a taking, correct?

MS. MACLENNAN: An abandonment with people -- if it is the -- if it is being used.

COMMISSIONER SCHWARTZ: Yes, is it taking?

MS. MACLENNAN: Yes, it is.

COMMISSIONER SCHWARTZ: You're taking somebody's personal property rights?

MS. MACLENNAN: No, it would be like if you changed Scottsdale road, to stop using the Scottsdale Road. They have that ability, it's not a taking to those who use Scottsdale Road.

COMMISSIONER SCHWARTZ: So those people on the north have a right to use that alley.

MS. MACLENNAN: They have whatever rights the City of Scottsdale grants them. And that's why I'm suggesting that you grant only access to Mr. Levine.

COMMISSIONER SCHWARTZ: Thank you.

CHAIRMAN STEINBERG: That was a deal that was on the table and it seemed like a great compromise.

MS. MACLENNAN: It didn't --

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CHAIRMAN STEINBERG: Let me backup, I mean deal or no deal and you selected no deal.

MS. MACLENNAN: No, my understanding is that there was a -- that it wasn't limited to Mr. Levine. And it wasn't -- it wasn't just -- it wasn't a flat rejection. Their negotiations were ongoing up until two days before this Planning Commission.

CHAIRMAN STEINBERG: I see. Thank you very much. Ken Kozial, followed by Grant MacLennan.

KEN KOZIAL: Hello everybody. My name is Ken Kozial. I live on 6511 East Calle Del Media. I just wanted to talk a little bit. I prepared this really slick PowerPoint presentation, but I don't want to be redundant, so I'm just going to hit the headers, okay?

First of all, the current state of Arcadia, I think you all saw that in the video. And just to correct something, that was all factual in that video because it was all taken on our street. So everything you saw in there was factual. All of that paperwork was fact. But I don't need to get into the neighborhood portion, I think you saw that very vividly and very visually.

I'm 43 years-old. I was born six door down from this alley opening. I was born on Montarosa. I have a wife and three beautiful children here and a daughter that is not here right now. You heard my little boy speak; I did not coach him at all. I purposely did not coach him. He's been involved in the neighborhood meetings. In fact, some of the neighbors said get him out of here, he might talk to the other side. But he didn't. He's a good guy.

I guess, here's my background: I'm a business owner here in Scottsdale. I'm a political science and economics -- I have two majors in political science and economics. So I get politics and I get money. I work for a U.S. congressman; I understand politics very well. The other side of it is, I feel like this guy up there. See that guy with a tape measure? We've been doing a lot of that. Or are we going to fall? This thing is crazy, you guys are right. It's going to come down to a real legal issue, right? We all know that.

And we knew, as a group of 19, that we had a ten percent chance of convincing you guys to abandon the alley. We've talked about three different compromises. There's a fourth that I'm sure every one of our neighbors, I can't speak for 100 percent, but I know that if they raise their hand in silence, the ones that face the alley on the north side, I bet they would agree to an abandonment and not take the property. They'd leave it, as long as it wasn't used for vehicles. I'm pretty convinced of that. This isn't a money grab by our neighbors. They just don't want vehicles back there guys. It's the truth.

And you know, the sad part about this is that we're all neighbors. When I look around, this gentleman is going to be my neighbor in a little while. The Carolino's, I've never met you Brad-- Brad, are you still here? Oh, he left. Our kids go to the same school. The Brunkhorst's, you guys have one of the most beautiful houses in Arizona. You guys are all so fortunate to be able to live on Exeter Boulevard. I used to walk to Kaibab school on Exeter Boulevard every day. How much time do I have?

Okay, real quick. This is my solution guys. This is the solution, Jonathan, [INDISERNIBLE 7:38:10] to you. I feel it is very commendable that you came to this

meeting. I really didn't think you'd be here. But what I'm hearing here is, it's all about one resident wanting to get one car that really never even going to be there. Is there another way? Are any of the other lots configured this way? You're affecting 18 families and people have lived here -- Mr. Johnson, 37 years in their original house. And so you're going to have your maintenance crews come back, through our street with one [INDISCERNIBLE 7:38:41] This is frustrating guys. Hopefully you'll come to a good conclusion here. Thank you.

CHAIRMAN STEINBERG: Thank you very much. Grant MacLennan, followed by Sheri Dollin.

GRANT MACLENNAN: This is just going to be real quick. I wanted to mention about the rights of the property owners in Lombardi Estates north of the alley. I agree they have rights, as I said earlier but I think it also really needs to go to what the historical use of the alley is. There's all kinds of tent-building legal things so, focus on what the use it. Is it used? Because it's not. Thank you.

CHAIRMAN STEINBERG: Thank you for being brief. Sheri Dollin, followed by Michael Dollin who will be speaking on behalf of himself plus Judy Corzell (phonetic). So Michael will have additional time.

SHERI DOLLIN: Hello, my name is Sheri Dollin and I live at 6502 East Calle Del Media with my husband and three daughters. And dog, who happens to run away a lot and I worry about his safety as well. My husband and I are invested in our family, our work, our community, our neighborhood and our home. We live on Calle Del Media for the same reasons as every Arcadia resident in this room; we value the experience of raising our children on Calle Del Media and see the investment of our property for the future.

I know that you found the videotape to be entertaining, enjoyed the music, but the value of that tape was to demonstrate our passion for what's going on here. Are we going to be guaranteed that the other properties on the north side of our house on Exeter, that are not yet owned that could be turned over and developed are going to not want to use our alley as a driveway? We bought -- we love the privacy of our backyard.

We were on a ski trip and we got called. We were coming off of a chairlift on the mountain, that there were trucks in our alley and that they were trying to take our trees down, without our notice. We value the privacy.

My neighbors have talked about the rights, they've talked about the crime, they've talked about -- Mr. Levine has talked about one part. What about the future? What about those other properties? Shane -- I don't remember your last name, but Shane we're going to be neighbors; first name basis. He has said he's not going to put an alley in the back yard. What about the other properties that can be turned over? I ask you to -- the only crime being committed here right now is the crime of our rights and our privacy. And that we come together as a -- in a common dialogue to work something out that's fair for everybody. Thank you very much.

CHAIRMAN STEINBERG: Thank you Mrs. Dollin. Michael Dollin. Michael, you are representing yourself and Judy Corzell. How much time do you need?

MICHAEL DOLLIN: How about six?

CHAIRMAN STEINBERG: Okay.

MR. DOLLIN: All right. I'll be fast. My name is Michael Dollin. Thank you Commissioner -- thank all of you. I know that this is a thankless task. I am a landscape architect and land use planner. I do a lot of work in this area. I design communities around Arizona. I have lots of experience in this area. And I want to talk to you about the facts. Jeffrey, Mr. Schwartz, your facts aren't entirely facts. A 12-foot half-alley is always a half-alley. It was a half-alley in 1964. It's a half-alley in 2006. South of our property, on the south side of Calle Del Media, there was a 10-foot dedication from the subdivision to the south and a 6-foot dedication from the subdivision -- from our subdivision to the north; making a full and complete, compliant 16-foot alley. The minimum alley in the area is 12-feet. It has not been vehicularly accessible. I have no right to drive a car in there, therefore, this notion of rights and taking of rights is erroneous. I cannot drive my vehicle back there.

If you want to talk about rights, I'd like to talk about them. But I also want to talk about ethics. I don't have enough time to talk about rights. The fundamental question here is use, not rights. Use. You've heard from all of us, we do not want vehicular use back there. There was a good way to prevent this. There was a better way to prevent this. The better way was when certain staff got the application from the builder of Mr. Levine's land and that reviewer could have picked up the design standards that are available to all of us, and realized that the 12-foot segment is a half-alley, not a full alley. Had it been done then, none of us would be here. We wouldn't be here, you wouldn't be here having to make this difficult decision. That is a fact.

We were told for weeks, months and perhaps longer that we were right and that we had nothing to worry about. Greg Williams told us, other people told us that. And therefore, we were relaxed. But it appeared as part of your regime starting to come back for our hearing in February that things were not going that way. We didn't hire 300 dollar an hour attorneys to come represent us and canvass our neighborhood. We're a bunch of hard working people who love our neighborhood and we love Arcadia. We love our neighbors. I don't look down on Jonathan Levine or any of our neighbors. I like Jonathan. He's a fabulous guy. I like our neighbors. They've built beautiful homes. We don't wish them any harm. All we're asking for is to protect our values. Arcadia has some of the nicest homes in the United States, they might even be the nicest neighborhoods in the United States.

I teach at Arizona State University. I teach my students that rights come with responsibilities. And what we value is the land that we live on. And that land is getting eroded and we have a possible solution to this. We are put in a difficult position. I want to give you facts.

You wanted to know why the so-called deal was rejected. It was a proposal. It wasn't a deal. The proposal that Jonathan and his associate Edgar, we tried very hard, very honestly, to reach an amicable solution. The fact of the matter is, that the proposal terminated with a gate on the west side of the 12-foot alley and a gate on the east end of the 12-foot alley. It preserved the 16-foot alley, that is currently being used and it preserved the 12-foot half-alley that is proposed to be used by these properties here on lots six and seven.

Lot six has taken down their fence. They've built a sport court that is in the alley. And this is a fact, your Code says a sport court has to be a five feet setback from the property line. Correct? Your Code says a sport court light has to be 20 feet back from the property line. I am correct. That light -- those lights are built in the alley. That sport court is built in the alley. There is a preexisting structure there that is built on the alley property line. It is built in the side yard setback. Your Code says that is not legal. Is that correct? There is another sport court here that has lights that are on the property line. They are not 20 feet setback. These are all property violations that occur in the alley. And the City, when notified of these, has -- these things have been allowed to happen.

So, why do we want abandonment? We want abandonment because the City has let us down. Had the City not let us down, we wouldn't be here. Are we willing to seek a resolution? Absolutely. Am I willing to meet with Jonathan to help convince my neighbors that we can find an amicable solution that works for our neighbors to the north and works for us, absolutely. The proposal didn't get far enough. We asked for additions; they were rejected. We asked for the fact that we wanted to limit the Commission to one vehicle only and if we get assurances of that then there may be an opportunity to convince all of our neighbors that that may be the best way to go.

Again, I thank you for your time. I know this is a difficult decision for you. And again, I want to tell my neighbors to the north, that we are not against you. We welcome you into our neighborhood. We want peace. We all love this neighborhood and we want to work together to make it the best that it can possibly be. Thank you.

CHAIRMAN STEINBERG: Mr. Dollin, are you asking us to continue this so you can work things out?

MR. DOLLIN: I'm asking for a solution. I'm so tired. I am so tired of this. This is nonsense. I have a life, a wife and three kids. Look at what you have done to us. We are good people and we have been put in opposition and we have got alley wars. And if this alley is not abandoned, if you decide not to abandon it, this problem doesn't go away. The problem continues and it magnifies because there are sleeper alleys all over. The City exhibit that was prepared that I got that says there's 12-foot alleys all over the place. I went out and measured those. That's me on there measuring those. None of them are 12-feet. None of them are 7-feet. They're a 16-foot minimum and all of them have garbage trucks, garbage cans and they were used for garbage alleys. None of them, none of them have as their primary and sole purpose, driveway access to secondary dwelling units. None of them. It is unprecedented in this City that we would sanction into existence after 42 years, a half alley and say okay, now we're going to use that, use is the word, now we're going to use that as the personal driveways for the properties on another street. There is no precedent, but you can set the precedent if you cannot support this.

COMMISSIONER SCHWARTZ: Thanks Michael. I appreciate your passion and I know you've worked hard on this. Do you know the date of the subdivision to the south, when it was developed and the plat was recorded?

MR. DOLLIN: The subdivision to the south, and I'm going to correct your record, here the subdivision to the south was recorded in 1964 and I believe the exact date was January 7th. Three weeks later, the subdivision ordinance was adopted.

APPROVED

COMMISSIONER SCHWARTZ: No, I mean, I'm sorry. I meant the subdivision to the south of your subdivision.

MR. DOLLIN: I don't know that.

COMMISSIONER SCHWARTZ: Okay, does staff know that answer? Randy? Okay, the second question to you is then, I appreciate you want to put this behind you, but so do we. We've had conversations. I've been out there three times. I've walked the alley twice. I had multiple conversations. I know. I've had the longest relationship of anybody with the people that live on both sides. I've known Mark Carolino and Don Carson for 20 years, so it is important to all of us. So, if the proposal was a deal that they were to put on the table and were willing to accept the deal, then is that a deal to you?

MR. DOLLIN: Could you say --

COMMISSIONER SCHWARTZ: You said there was a proposal, that wasn't a deal. So if I said to Mr. Levine and Mr. Cohen, is that a deal? It's acceptable to them, they consider that a deal then is it a deal that's acceptable to you? Not a proposal. A deal.

MR. DOLLIN: I can only speak for myself. My neighbors have to speak for themselves. From my vantage point, and I live right behind Mr. Levine, behind Jonathan's house, can I live with one car, with what he said, that occasionally there might be some use. It's not my preference, but I'm a guy -- I'm not one that gets paid to like fight. I'm a problem solver. That's what I do for a living. I'm willing to solve the problem, if we can find common ground. We should have found common ground. There is common ground --

COMMISSIONER SCHWARTZ: Just answer my question. Is that acceptable to you? Would that be acceptable to you?

MR. DOLLIN: Which do you mean?

COMMISSIONER SCHWARTZ: The deal that Mr. Levine and Mr. Colton put on the table to you?

MR. DOLLIN: It is marginally acceptable --

INDISCERNIBLE -- SIMULTANEOUS CONVERSATION

MR. DOLLIN: It is not because it kept the ends open and allows for four more guesthouses.

COMMISSIONER SCHWARTZ: Thank you.

CHAIRMAN STEINBERG: Okay, we're up to staff's presentation or staff analysis. Who's going to do that? Frank or Randy? Thank you Randy. Okay, public testimony has now officially ended. Thank you.

RANDY GRANT: As you've heard, a lot of the issues have already been aired so I won't try to repeat all of the issues, but may just respond to some of the issues that have been raised.

Clearly, there are valid arguments for and against this. We've seen that the neighbors are concerned about the use of the alley. The alley is actually established on the plat and until it's removed, it remains there, whether it's used or not. I mean, it is a function of the plating process and as it is established on the plat, it can only be removed from the plat.

There have been questions raised about the 12-foot alley width. There is some difficulty in gaining access to all of historical records because they had a tendency to be updated and revised and it is difficult to find what exactly was in place at the time that this was occurring. However, we do know that this plat was approved by the City in early 1964. Subsequently, the first subdivision Ordinance went into effect. The County didn't have a subdivision ordinance in effect at the time. This was actually annexed into the City in 1961. So for three years it was in the City as part of Lombardi Estates.

Subsequent to that, it was established within the City and established with 12-foot alley width. The 12-foot portion at the west end of the subdivision that goes north and south was established 12-feet on the side of the lot liner that was in the subdivision at the time because there was a feeling that lot number 7 was going to be split and the cul-de-sac would be extended to the west. And the temporary -- and it even says on the plat itself, that the temporary alley would be abandoned and would be re-established as a permanent alley. And it was.

In the 12-foot section, only one property was abandoned and the alley was established as 6-feet on each side of the property line between the new lot 7 and the existing lot, which had contained the entire alley easement. So, we believe -- and that occurred in 1968. So we believe that there were a number of opportunities for this to be established at something greater than 12-feet and that at the time, this was done. And then again, four years later when the temporary alley became a permanent alley, it was re-established and rededicated as 12-feet.

There is also some distinction between whether or not this is unique to this area. We've recently done some studies as a result of an on-going effort and upcoming effort that we have, to revise the R1-7 zoning district. And part of that was looking at all of the properties zoned residential south of Indian Bend Road. And it's shocking, what that reveals in some instances; particularly that 74 percent of the residentially zoned property south of Indian Bend have access to an alley. It was a requirement early on. Subdivisions were required to locate alleys as secondary access. So the alley condition is certainly not unique to this area.

And I think we would acknowledge that there have been issues with maintenance and so forth in the past. And the City, in the early 1990's began a program of paving -- and I use the term paving a little infamously (phonetic), it's putting down some of the mettlesome asphalt from road projects, but putting it in the alleys so that it would keep dust down. And the City has had a program where 12 percent of the alleys each year are paved with this material. And then we go back four years later and repave it. So, alleys are really a standard condition in the south part of the community.

And we haven't seen statistically that that contributes to a change in the crime statistics because simply the alley is there. However, there certainly is that perspective and having the alley accessible will lead to some additional use that wouldn't be there obviously if it was abandoned. We believe that it's clear from the photographs, just as a matter of fact, that the east and west alleys have been used from time to time. It is an established alley and we believe that the north and south segments have been used over time and have established some type of a pattern of usage that is clear in the photographs.

The building permit was issued for lot 4, prior to the time that we met with the neighbors about the abandonment application. And just to address some of the things relative to the staff performance on this, I can tell you that we had this application for two or three months and we didn't have an active applicant to work with. Now, it's not usual that an abandonment of this complexity will take four, five or six months to get through the process. But we were watching this closely because we knew the sensitivity of it, what it might generate in terms of community interest. And I can tell you that we have done more perhaps than we typically would do to make sure that everybody was involved in the process.

The question was asked about whether or not there was an obligation on the part of the property owner on Exeter to notify the residents south of the alley of intentions to create access onto the alley and to build a guesthouse. In fact, the City's charter prevents there from being public access to plans and prevents the City from interfering with plans to modify site design and architecture for single family residential. It's one of those things that the Development Review Board doesn't get into and it's because it's part of the charter that a person that obtains a building permit and conforms with the Codes, doesn't have to go through a public notice process in order to proceed.

I would concur that I think there is the possibility, and you certainly have it at your discretion to continue this item if you feel like there is some opportunity. We were hopeful that there would be some resolution to this prior to the meeting and there is nothing to present.

There's quite a bit of interest in the Code violations and I can tell you that we will follow-up on those aggressively. Obviously when you have something like this that has as much community interest on both sides and as much emotion as there is on both sides, we really don't want to be in a position of throwing gasoline on the fire to follow-up on those things during this process. But there are Code violations. We will follow-up on them and they will be dealt with like any other Code violation. So we're certainly not advocating that responsibility. And I can assure you that we will be pursuing those and there will be action taken.

I'd be happy to answer any questions if there's anything else that --

CHAIRMAN STEINBERG: I'm sure we do. We'll start with Mr. O'Neill.

COMMISSIONER O'NEILL: Mr. Grant, thank you. Is it the City's opinion and maybe -- I don't know if it's legal opinion or not -- but opinion that the alleyway currently has legal vehicular access allowed? Whether it's been used or not, I'm not concerned with in this question. But is it legally permitted and if so, I mean are those rights equal for lots abutting it on either side of the alley?

MR. GRANT: The answer is yes, we consider it to be legal. The fact that it may not be to a current standard makes it nonconforming and we do have a lot of them. There may be alleys that are 16-feet wide or 20-feet wide in perception as you drive down them between walls and so forth, but we have a list of alleys that are not even 12-feet wide. So yes, we consider it to be legal. It's established on the plat as an alley. And the alley definition includes vehicular access.

COMMISSIONER O'NEILL: I've got two other questions. I believe, when for example you're abandoning -- an applicant's proposing to abandon a public utility easement for example, that before you're even submitting, before the applicant even submits the request, the application, that they need to get consent from all people that have rights to that public utility easement; in this case, all utility providers, you need to get their consent to abandon that easement before they can even submit the application. Is there any similar requirement when you're submitting an application to request the abandonment of an alley, that you're required to get unanimous consent or 75 percent consent or 50 percent consent or anything?

MR. GRANT: Commissioner O'Neill, we had asked early on in the process that the application include all of those property owners that would be affected by the abandonment. All of this alley area came from the Villa Arcadia Two subdivision, so all of it would go back to the Villa Arcadia Two subdivision. We asked that all of the property owners between -- within the edges of the alley, be a part of the process because obviously we can't abandon half of the alley up to a certain property and then not abandon it, and then abandon the remainder. So we asked that there be enough of a property interest in the application that we would be able to abandon the alley appropriately and effectively, if that be the decision of the Council.

We do notification. When we get an application, we notify people within a radius of the application. So I don't know that it's unusual that the applicant would not notify the people living on Exeter. But it would be unusual if those people weren't notified as a result of the process going on. And I think they were notified.

COMMISSIONER O'NEILL: But there's no requirement for parties that have legal rights to something for them to be not even notified, but for them to be included in a request for something that's requesting to be abandoned that they have legal rights to.

MR. GRANT: No, we would determine whether or not, for example, whether or not there's been a permit issued that would allow them to have some right or whether or not a right had been established as a function of the application. But no, we would not require unanimous support.

COMMISSIONER O'NEILL: All right, last question. Do you know if there are other alleyways like this in the City that abut larger lot subdivisions like the Lombardi subdivision that could actually, in practicality, use an alley like this for vehicular access or ancillary buildings? The reason I ask the question is it's just we've got that map that I think was shown and we're referring to here, but I don't know personally of them and I don't know if they exist or not. I think this might be a very unique situation where we've got an alley that abuts properties that actually could use it for the proposed use on Mr. Levine's lot 4.

MR. GRANT: This is an interactive map that's the same as Mr. Dollin's.

COMMISSIONER O'NEILL: Just a record point while you're on that one. If you could go back. The pool on the upper right hand corner of that drawing of that map, where the alley is, which is also a cul-de-sac on the other side, is where I grew up. So I'm familiar with the issue, familiar with alleys, familiar with cul-de-sacs and riding my bike and all of the other things that we've talked about. I'm familiar with playing in the alley. Familiar with all of the subject matter that we're talking about.

Something else I was going to touch on later, for myself, I mean there's issues that I think I'm being asked and the rest of the Board is being asked to look at today that are -- the reality for me are legal issues; they're not social issues or family issues or neighborhood issues; they're legal issues in my eyes. But I'm sensitive to both of these and ironically, where that pool is is where I learned to swim.

MR. GRANT: This alley is dedicated as an 8-foot alley.

COMMISSIONER O'NEILL: Mr. Grant, my question was, I just think -- I'm questioning if this is unique in the sense that I don't know of any other alleyways in Scottsdale that abut large lot subdivisions that actually have the ability to use the alleyway for ancillary use for guesthouses or garages or things like this. And because of that, I think it's much more unique than typical other 8-foot or 16-foot or 12-foot, whatever the dimension is, because of the fact that it's very unique I think, is that it abuts this large lot subdivision.

MR. GRANT: I think you're correct. I think that on the smaller lots what we see typically is if you have an exposed carport, and the carport is converted to living space, then for purposes of protecting your vehicle, you may build a carport in the back and access it off of the alley. Often times we see boats and recreational vehicles that will be stored in the back yard and will use alley access. That's more common on smaller properties where you don't have as much flexibility. We don't see it as often on larger properties; you're correct.

This is a 10-foot alley on the right hand side. I don't know if there is access off of it, but it certainly is a larger lot subdivision. And again, it's a little hard to see if there are any driveway entrances, but a mixture of 7 to 10-foot alley easements. They may be larger functionally out there because if people have used them, they may tend to have widened out the paths or whatever. But from a dedication standpoint, they are narrow.

CHAIRMAN STEINBERG: Okay. Commissioner Heitel, do you have any questions of Mr. Grant?

VICE-CHAIRMAN HEITEL: Not at the moment.

CHAIRMAN STEINBERG: Randy, I have a quick question. If the deal is accepted, and I'm just talking hypothetically, and Mr. Levine said okay, I want to upgrade the alley. What standards would he have to abide by? Code standards or standards way back when? And would he be able to achieve that?

MR. GRANT: If I understand the proposal that's being suggested, it would convert that from a dedicated alley to a driveway. And the driveway standard would be a dust proof surface. So, there are options that don't have to meet City standards if it's not maintained

as an alley. And I think that if the proposal were accepted, we'd be looking at something less than paving, whether it's a treated decomposed granite or some other type of dust palliating.

CHAIRMAN STEINBERG: And he'd have to file plans with the City?

MR. GRANT: Yes.

CHAIRMAN STEINBERG: And at his own expense?

MR. GRANT: Yes.

CHAIRMAN STEINBERG: Okay, thank you. Commissioner Schwartz, did you have a question?

COMMISSIONER SCHWARTZ: No, I didn't. Thank you.

CHAIRMAN STEINBERG: Commissioner Steinke?

COMMISSIONER STEINKE: I'm going to piggy-back a little bit onto what Commissioner O'Neill was asking. And in the impact analysis, the Department response is that it's City policy to not support abandonment if the alley is either being actively used or if the abandonment request is opposed by the affected property owners.

And then also in the approval process where you go through the issues checklist, staff's position regarding abandonment requests has been to not support unless all property owners with frontage favor the abandonment. I think those are fairly consistent with each other, but I think what I was hearing from you, and I don't necessarily mean to get a definitive answer on this right now, what I was hearing from you is that because of the property configuration, the way it was subdivided, the frontage issue for those people on Exeter appears to have taken less of a priority than either of these statements seem to give them. And I'm trying to get that straight in my mind.

And the second question and then I'll turn you loose here. I heard again in the presentation, I believe it was from Randy, that somehow a permit was issued to Mr. Levine to use the alley. And I asked earlier if there was anything besides a building permit issued and my question is, is there such a thing as a permit to use an alley. And if so, was either that done in writing or is that just an assumed right because the alley exists and abuts his property?

MR. GRANT: I think you're absolutely correct in the last statement. When we look for whether or not a building permit is appropriate, we look for the legal definition of whether or not it is legal access. And if it shows on a plat as legal access, then we don't have a reason not to issue the permit.

My response regarding Commissioner O'Neill's question is: That was relative to their ability to make an application, and not whether in the application process, in reviewing the application, we would take equal consideration of everyone's property rights. Only to say that someone can make an application without representing all of those people that may have a property frontage. And we see that a lot with rezoning and so forth. You have a property boundary where the rezoning may affect someone next door, but it doesn't preclude you from having the right to apply.

COMMISSIONER STEINKE: But the -- you're reason for support or nonsupport is really based on not consensus but a total agreement from affected or people who live on streets that abut that same property. That part is consistent. What you're saying is the application doesn't have to include those people, but before you will recommend, and this is a consistent -- you have referred to it as a policy and a position in two places here. The policy is that it has to be unanimous.

MR. GRANT: I think the policy is that we would not recommend abandonment if there was active use of the alley. So that would apply if no one was actively using the alley.

COMMISSIONER HEITEL: Randy, this is a question, maybe for you or Frank or both or neither of you. (Laughter) If we were to recommend denial of this abandonment in consideration for an obvious vested property right to one individual, clearly Levine, does the City have a mechanism at our suggestion that would put on hold, until we establish some kind of overall City policy in regards to living quarter rear access on all of these alleys? These issues are going to be coming time and time again. I, for four years have rallied to suggest that many of these neighborhoods get together and develop community plans and neighborhood plans, and they don't. There's only one or two in the entire City that I'm aware of; some up north and whatever. But so that we, as a planning organization, have a policy, and you and staff, if you're presented with applications that are not pending at the moment, could freeze those applications until we can develop a policy. Is that a mechanism that's available?

MR. GRAY: It's time to heave it to the attorney.

MS. BRONSKI: Chairman, Commissioner Heitel, I know you're just thrilled to hear me answer a question. You actually had a couple of questions that I've heard. The most recent one that I heard was, can we -- actually, I'm going to go to the first one. The first one you asked was: Could the Commission abandon the alley and then reserve a right on an individual. Did I hear that correctly?

VICE-CHAIRMAN HEITEL: No, my question was: If we voted to deny the abandonment request, recognizing what I consider to be a vested property right of somebody who's been issued a permit, but could we also make some kind of recommendation that would be followed-up, perhaps to the Council or whatever, that some kind of moratorium be issued that would not only protect the neighborhood in general that we're talking about, the rest of this neighborhood would be prevented in having the rear loaded driveways, and the rest of our community the same, until we developed some kind of policy in regards to that. That policy might include lots of things. It might include notice to affected neighbors. It might include minimum acceptable alley standards. It might include all sorts of things that as a general planning vehicle would clarify to everybody. That's really --

MS. BRONSKI: Chairman, Commissioner Heitel, probably not. You certainly could make a recommendation that the Council or staff look at various issues. But to prevent people, I don't think you could have a "moratorium" to prevent people from accessing a right-of-way because people have a right to access city right-of-ways.

VICE-CHAIRMAN HEITEL: Yes, I believe that. But the moratorium would be more of a planning vehicle that would be more specific that would really, you know, involve rear

loaded garages period. You know, it wouldn't prevent access for maintenance, it wouldn't prevent access for utilities, it wouldn't prevent, you know, occasional use. It would just be a moratorium on rear loaded garages.

MS. BRONSKI: The trouble with that approach would be, to the extent that people have a right to build accessory buildings on their property, the City doesn't really have a right to do a moratorium on issuing building permits unless you could meet the very specific provisions in the State moratorium statute and almost no one can meet those, so that's very unlikely. We'd be happy to look some more at that, but off the top of my head, I think it's very questionable whether that would be an ability that you have.

Now, I think your second question dealt with: Will there be an opportunity to hold applications? Now, you're going to have to decide up or down on a recommendation on any particular abandonment that files an application. However, if you were to deny an application, and the Council agree with you, you could certainly have staff keep all of those applications so that if there was a comprehensive policy that you all came up with at a later date and would then support abandonment of alleys, those people could be notified that they can file a new application and then start the process again under your new policy.

VICE-CHAIRMAN HEITEL: Thanks.

CHAIRMAN STEINBERG: Thank you. Any other questions of the staff? Commissioner Steinke.

COMMISSIONER STEINKE: No more questions, but maybe a comment and then a remark or two that can kick this around and get us going in one direction or the other here. I believe that in all of the testimony tonight -- and I certainly thank everybody for being here. Everybody came and took the positions that you did and gave us plenty of things to think about, but I believe that there were assumptions made on a lot of sides and a lot of fronts that weren't on firm ground.

I think there's a fundamental problem with the assumption that an alleyway is not an alleyway if it has grass or trees growing around it. I know plenty of sidewalks in which people may never have walked on that are still sidewalks, so I think that argument is a meek one.

I think there's an assumption made by Mr. Levine that may have been the result of comments or questions you've asked of the City staff and so on about placement of that building and that property that, if nothing else, should have been a flag to talk to the neighbors and confront them about what you were going to do and try to make sure that, as a good neighbor, it would work. Even if by direction of the City, it seems to be appropriate.

I think there's assumptions about the City and its responsibility in alleyways. When I look at the pictures I think, you know, the neighborhood -- everybody says how proud they are of the neighborhood and I look at the photos, and I admittedly had some other priorities, but I admittedly was not one that walked the area. But I know the area and just looking at the photos and it seemed to be conflicting to hear you say this is my neighborhood, I'm proud of it, it's wonderful and then you take pictures of everything that isn't right about it. And so I think there's some assumptions there that somehow some of

you want to protect something that you really don't want to protect. You're trying to protect something else, and trying to preserve something that isn't an asset for you.

So, I guess in looking at this there are -- it's a matter of sequence. I think Mr. O'Neill's questions about when things happened and whether or not the application came in after they noticed that there might be a change to the status of that alleyway, how all of that came down certainly plays into this.

But in my opinion, I haven't seen anything consistent coming out of staff's approach to this, the neighborhood's approach and I'm very disappointed that the neighborhood has found this as divisive as it has, when it shouldn't be. I don't know what the answer is, but I just hate to see the neighborhoods in this community as divided as they are.

But I think there are enough questions in this situation that I strictly look at what would be the best thing for that neighborhood and I believe that the abandonment is the answer to that as opposed to any other action. So, at least as it exists this moment, unless people can work through the issues that they seem to be getting stuck up against, I'd support the abandonment as it's presented, for the reasons that it improves the neighborhood in the whole, as a total entity, more than any other decision that I can rationally come up with tonight. So, thanks for the five minutes.

CHAIRMAN STEINBERG: We're going to give the Applicant a chance to wrap up and respond to what has transpired tonight. So if he could be brief, that would be appreciated. Thank you.

ATTORNEY FOR APPLICANT: Mr. Chairman, I will be brief. I have a few comments and then Michael Dollin had a few comments and then we're done.

You heard tonight about those pictures of --

CHAIRMAN STEINBERG: We're going to have to limit it to your comments. I'm sorry. Public testimony has been closed. Thank you.

ATTORNEY FOR APPLICANT: Okay. Calle Del Media is a cul-de-sac. You've heard that many times tonight. During Ms. Riddell's presentation, she talked about the definition of alley that was in effect in 1964. And the phrase I wrote down when I heard it was: Not intended for general traffic circulation. If you don't abandon this thing and it is paved, we have general traffic circulation. The cul-de-sac becomes general traffic circulation, all of that traffic entering on Exeter comes on to Calle Del Media.

You've also heard a lot about reliance and property rights. Well, thank you. The residents on Calle Del Media had a right to rely too. Rely upon the alley not being improved by the City, notwithstanding the program that Mr. Grant mentioned, and the City going out and laying down asphalt. In the past 10 years, they've never come to this alley to do that. Relies upon it never being paved. Relies upon there never being consistent vehicular use. That's the kind of reliance I am talking about.

And again I'll say, it is bad public policy to allow full vehicular use of a substandard alley. Time does not stand still. We're in a modern era here. That alley is unsafe; it's too narrow. Public policy, the public health, safety and welfare must be paramount, the

paramount consideration here and that's what must be served here, not the individual property rights. That's all I'm going to have. Thank you.

CHAIRMAN STEINBERG: Thank you very much. Any Commissioners have any comments?

COMMISSIONER SCHWARTZ: Yes, I would just like to thank everybody for coming. I think that the list of people that I've communicated with through this process know how much I've been trying to work hard on a compromise for this particular issue. And unfortunately, whatever was proposed to the neighborhood was not accepted.

So, here are my findings. And if you'll excuse me, because I'm reading off of my notes. The definition of alley doesn't preclude or limit any type of vehicles or amount of traffic. The City has to determine -- has the right to determine if the alley has no regular use. In my mind, the City has determined the needs by issuing a building permit with a driveway access to the alley in November of '04. The alley was dedicated at the time with the adequate widths and tangents based upon the then current Ordinances. The fact that the alley is not or has limited use is not a reason to approve an abandonment. It doesn't matter who owned the dedication; it's for the public use and benefit. And it's not my right as a Commissioner for the City to take away access to properties without all of their consent. It's a taking.

And I also, along with that, I think it's a poor public policy for us to become the referee between neighborhoods about abandoning an alley. I think the oneness is on the neighborhood to build a consensus. If it can't build a consensus, then we leave it status quo. So with that, I would make a recommendation that we deny case 20-AB-2005.

CHAIRMAN STEINBERG: Okay, before we react to that, I think some of the other Commissioners have comments. Starting with Commissioner Barnett.

COMMISSIONER BARNETT: Thanks everybody for coming out tonight. I know you guys are probably tired of thinking about this and talking about it. And I think it's quite obvious that, you know, obviously we want to try to find a solution between everybody, but with this many people and this intense of an issue, you obviously weren't able to come up with some type of compromise.

Staff didn't give us any direction; the direction they're giving us is denial because there is not a compromise. So you guys have chosen to bring it through the public policy, through the public process. You're looking for some type of a decision from us, or some type of a decision from the staff and I think we need to come up with some type of a solution, but there are other ways that you could have done this. I mean, you could have gone to a mediator or you could have gone to a board of mediators. You could have set up some independent people. But you didn't do that and you decided to come through here.

So I guess the way that our process is setup is we've got a bunch of regular guys, regular people that have some background, some interest, some knowledge of a property, rights, easements, straight edge, all of that kind of stuff. And we're not a bunch of lawyers. So the fact that we're not a bunch of lawyers, I'm using the standard of a regular kind of standard. And I'm going to evaluate this when I'm looking at different

types of rights. The rights of the individual people, the rights of the land owners, the rights of the other people that are not in this room and not being represented.

And you know, lawyers start off the argument saying is it an alley or is it not an alley. We never got a resolution to that. We were talking about rights and there's other rights that we haven't talked about. And the house being built is taking away from a view right, a view corridor right. So there are other rights that we haven't talked about here. But I guess when it comes down to it, you know, we're supposed to make a decision and the regular guy decision that I'm falling down on is I'm taking all of you out of the question. I'm saying there's no neighbors in there. There's no -- what we're looking at is does this alleyway make a whole lot of sense to start with or is this going to make any sense to start with. And if you look at it from some of the rational standpoints, I mean it's a loopy alley. It goes no where. There's no continuances, there's no trail system, there's no path system that's going to go anywhere. There's no horses in the area so there's no -- I wouldn't say that there's a lot of equestrians riding around in there.

So I look at it and I say well, what's the point? It just doesn't make any sense to me. It was designed in the 40's, 50's, 60's like all of the other alleys and for the most part, the City has changed the way that they look at subdivisions and alleys are not viewed as a really important part of the neighborhood. So I'm actually going to support the neighbor - support the abandonment and to me it just makes sense. It doesn't go anywhere. It's a loop and I know that's kind of a real simplistic pragmatic way to look at it.

And the thing about being a Planning Commissioner is you are going to make everybody mad. So you're already irritated but you know, I'm representing both you guys over here on Calle Del Media, you guys on the other street of Exeter. I'm representing the staff. I'm representing everybody. So, I don't know if that's a solution or not but that's what seems to make a pragmatic practical approach for me. So, I think it's going to kind of depend on how the motion's here but, I would support the abandonment. And moving forward, I would actually support a whole lot of other abandonment's in south Scottsdale and central Scottsdale that have these loopy alleyways that go no where.

You know, we're talking about abandoning stuff up in north Scottsdale all of the time. But the road systems not in. The trail systems not in. There's lots of other stuff that hasn't been finished up there. I'm much more comfortable abandoning something in an older part of town that has defined traffic flows, that we know how the City has developed. And I guess with that, we'll just pass it on.

CHAIRMAN STEINBERG: Thank you, Commissioner Barnett. Would anybody else care to say anything? Commissioner Heitel?

VICE-CHAIRMAN HEITEL: Yes. I'll say a couple of things. I'll probably be brief. I think it's probably clear that I have some fundamental concerns about vested rights, even though that seems to be a point of derision by some people in the audience, it's a huge concern for me. The government's doing things, providing rights, taking rights away arbitrarily. We have a publicly dedicated right to use, unrestricted use to the public by virtue of a plat.

We've got a law abiding citizen, came to the City without any apparent malcontent, I mean mal-intent, followed the accepted process. Maybe the process is not right; that was the process he was asked to follow. He was given a building permit to construct

substantial improvements, as all of our improvements to our homes are substantial, with an alley access garage. He did nothing wrong. He's been given a right. He accepted in good faith the permit he was granted and now, we are arbitrarily just going to strip that away from him. I'm stunned. I probably have lived in and my family continues to live, my parents, in a very similar neighborhood in north Phoenix, for over 40 years. So 46, going on 50 years. So I know very, very well what it's like to live on a cul-de-sac, grow up on a cul-de-sac, have alleys behind my house. And I am not in any shape insensitive to the neighborhood issues at all. But I continue to remain concerned about private property rights in this arbitrary and capricious just sort of well, sorry, you did everything you wanted to do. You built your house there. You built your garage there, but we're just going to take it away because we just don't -- we just feel like it, I don't know. So I'm, you know it's a very perplexing, very difficult situation, but I have no other opportunity, having discussed potential opportunities with staff and legal counsel, but to second the motion that's on the table and vote to deny the request for this abandonment.

CHAIRMAN STEINBERG: Thank you Commissioner. I too feel for Mr. Levine. I think he's done everything in an admirable fashion and I think, well I suppose, the victim in this whole issue.

I think the alley's condition today is appalling; that's why it's not used. I think it should be maintained. Alleys are resurging now in planning. We see alleys in DC Ranch, Verado, the Stacked Forties. They're using alleys in lots of new planned communities so alleys have traditionally served a purpose, but not in the condition that this alley is in. So I'm really baffled at some of the things we've heard today.

The issue of property rights has been spoken of pretty well by my fellow Commissioners so I'm ready to have Commissioner Schwartz restate his motion so that we can all be on the same page.

COMMISSIONER SCHWARTZ: MOVED TO DENY CASE 20-AB-2005. SECONDED BY VICE-CHAIRMAN HEITEL.

COMMISSIONER O'NEILL: Aye.

VICE-CHAIRMAN HEITEL: Aye.

CHAIRMAN STEINBERG: Aye.

COMMISSIONER SCHWARTZ: Aye.

COMMISSIONER BARNETT: Nay.

COMMISSIONER STEINKE: Nay.

**THE MOTION FOR DENIAL CARRIED BY A VOTE OF FOUR (4) TO TWO (2).
COMMISSIONERS BARNETT AND STEINKE DISSENTED.**

WRITTEN COMMUNICATION

A one page letter dated April 17, 2006 by John Colton; including 14 pages of attachments.

APPROVED

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission adjourned at 8:38 p.m.

Respectfully submitted,
A/V Tronics, Inc.

APPROVED